

DOCUMENT RESUME

ED 217 573

EA 014 711

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TITLE Negotiations 1980.
INSTITUTION New Jersey School Boards Association, Trenton.
PUB DATE 79
NOTE 91p.; For related documents, see ED 157 208, ED 162 418, EA 014 712, and EA 014 652.
AVAILABLE FROM Business Office, New Jersey School Boards Association, P.O. Box 909, Trenton, NJ 08605 (\$6.00).
EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Administrator Role; Board of Education Policy; *Collective Bargaining; *Contracts; Court Litigation; Elementary Secondary Education; Fringe Benefits; Grievance Procedures; Labor Legislation; *Labor Relations; Leaves of Absence; Sabbatical Leaves; Scope of Bargaining; Tuition
IDENTIFIERS *New Jersey; New Jersey Public Employment Relations Commission; Public Employment Relations Boards

ABSTRACT

This report, one of an annual series, analyzes New Jersey school labor negotiations laws and practices as of 1980 from the school board's perspective. This edition of the report is not as comprehensive as earlier issues, since the issuing agency has developed other publications to treat some aspects of negotiation. The topics remaining are new to this series or are updates necessitated by legal developments. The articles included in this report deal with the scope of negotiations; employee grievances; the negotiation of effective grievance procedures; the analysis of contract clauses concerning sabbatical leaves, tuition reimbursement to teachers attending college, and personal leave; the relationship between management rights and the law as interpreted by the New Jersey Public Employment Relations Commission; the use of professional negotiators; the role of supervisors in negotiations; and the nature of employee relations in the context of labor agreements. An extensive analysis of the New Jersey Education Association's sample agreement for 1980-81 constitutes the bulk of the document. A brief bibliography identifying relevant publications and films and a list of recent court decisions affecting negotiations complete the report. (Author/PGD)

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NEGOTIATION 1980

Negotiations 1980

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Published by the New Jersey School Boards Association
Labor Relations Department

A PUBLICATION OF THE NEW JERSEY SCHOOL BOARDS ASSOCIATION
315 West State Street, P.O. Box 909
Trenton, New Jersey 08605



New Jersey
School Boards Association

Headquarters: 315 West State Street, P.O. Box 909, Trenton, New Jersey 08605

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Introduction

The production of this annual publication becomes increasingly difficult because the authors are forced to assess how much useful information can be put in a single book, given the pressure of publishing in time to assist in preparing for school negotiations.

This year has a new complication. The New Jersey School Boards Association's Labor Relations Department is publishing two other books this year also related to the bargaining process. Both are volumes in the "What Every School Board Member Should Know About. . ." series: one, entitled, *The Public Employment Relations Law*, is a revised and expanded version of an earlier publication and is now available for purchase; the other, entitled, *Collective Negotiations*, will be available during January, and covers preparation for negotiations and critical bargaining tactics.

Because of the availability of these books, we have decided to limit the articles in this publication to special issues. Some of these involve updates on legal developments regarding the scope of negotiations, grievances, and management rights. Other articles concern topics never before covered in this publication, such as the role of professional negotiators and supervisors in negotiations.

Readers should consider this book as a supplement to the basic information contained in the "What Every. . ." publications. In addition, the following articles from last year's *Negotiations 79* should be reread because they contain valuable information still applicable to your negotiations this year:

- The Meaning of Good Faith Bargaining
- Negotiating Committees and the Board
- Caps and Negotiations
- Timing
- Record-Keeping
- Board Proposals
- At the Table
- Impasse Procedures
- Maternity Leave, Childcare Leave and Sick Leave Benefits

Finally, two recent publications by the Labor Relations Department are necessary tools for effective negotiations:

Costing Out the Labor Agreement provides instructions on calculating the expense of salaries and benefits in your current contract as well as estimating the cost of new union demands.

An Analysis of Teachers' Contracts in New Jersey 1978-79 is your initial source of information for preparing for negotiations, with data from over 500 school districts on salaries and selected fringe benefits.

Negotiations in New Jersey schools are not getting any easier. These publications have proven useful to many school boards in the past. But no amount of instruction and advice can guarantee a successful conclusion to negotiations. The criteria for that achievement remains experience, stamina and fortitude by the board's negotiating team. Those qualities are critical to reaching a labor agreement that is fair to the board, fair to teachers, and fair to the community and the children of the district.

Good luck in negotiations.

Garry M. Whalen
Director of Labor Relations

The Scope of Negotiations

During the past year, over 100 decisions on the scope of negotiations were rendered by PERC and the courts. Much of this activity resulted from the New Jersey Supreme Court's decision in *Ridgefield Park*,¹ where they found that only two categories of topics for negotiations existed: required and illegal. Required subjects were terms and conditions of employment that intimately and directly affect the work and welfare of public employees and on which negotiated agreements would not significantly interfere with the exercise of basic management prerogatives concerning government policy. Illegal topics included all major educational policy decisions and management prerogatives. The New Jersey Supreme Court further clarified the illegal category of negotiations in another case, where it found that public employers cannot negotiate over topics which are specifically set by other statutes or administrative regulations² if such negotiations contravene either the statute or the regulation.

Ridgefield Park eliminated the permissive category of bargaining that had resulted from an interpretation by the Public Employment Relations Commission (PERC) of the 1975 amendments to the public employee bargaining law. Holding that these amendments expanded the scope of what could voluntarily be negotiated and arbitrated, PERC had classified matters that were not terms and conditions of employment, yet not precluded from negotiations by statute, as "permissive" topics of negotiations. Items such as class size, involuntary transfer, curriculum and the budget were ruled as permissive subjects of negotiations by PERC and some lower courts.

Permissive items were not mandatorily negotiable, but could be negotiated if both parties wished to do so. If a board did not want to discuss a permissive subject, it was not necessary for it to do so, and a union's insistence on negotiating on a permissive topic to a point of impasse, would have been considered an unfair practice. If the parties had agreed to a permissive topic in their contract, they were bound by that agreement. PERC had ruled in several cases that disputes concerning violations of permissive topics were arbitrable if otherwise arbitrable under the parties' contract.

In *Ridgefield Park*, the New Jersey Supreme Court disagreed with PERC that the C.123 amendments authorized a permissive category of negotiations. Noting the difference between the process of "collective bargaining" authorized in private sector law and the "collective negotiations" authorized in New Jersey's statute covering public employees, the Court found that there are inherent limitations to the bargaining authority of public employers and public employees. The Court, in *Ridgefield Park* went on to say that the community involvement necessary to a thorough and efficient system of public education, as defined in the Public School Education Act of 1975 (C.212), would be thwarted by allowing decisions concerning educational policy to be made at the bargaining table.

PERC was given clear and exclusive authority to determine scope issues, the Supreme Court said, and since then has reaffirmed the New Jersey Supreme Court's holding in *Ridgefield Park* that only two categories of topics for negotiations exist: mandatorily negotiable terms and conditions of employment, and non-negotiable items of governmental policy. Unless an item intimately and directly affects employees' terms and conditions of employment, and a negotiated agreement would not significantly interfere with management prerogatives regarding the establishment of governmental policy, it is non-negotiable and non-arbitrable. Contract clauses concerning non-negotiable items are *ultra vires* and unenforceable.

Although matters of educational policy and management prerogatives cannot be negotiated, a method for the resolution of complaints arising out of the application of management prerogatives to individual employees is a mandatorily negotiable term and condition of employment. In *Bernards Township*,³ the New Jersey

1 *Ridgefield Park Education Association v. Ridgefield Park Board of Education*, 78 NJ 144.

2 *State of New Jersey v. Local 195, IFPTE and Local 518, SEIU*, 78 NJ 54.

3 *Bernards Township Board of Education v. Bernards Township Education Association*, 78 NJ 311

Supreme Court determined that the withholding of a teacher's salary increment was a non-negotiable management prerogative that could not be submitted to binding arbitration. The Court went on to say, however, that the matter (withholding of a salary increment) could be submitted to advisory arbitration, if the parties so agreed. The Court reasoned that since a non-binding mechanism for resolving a dispute over the application of a management prerogative intimately and directly affected a teacher's work and welfare, and since agreeing to this type of mechanism would not significantly interfere with educational decision-making, advisory arbitration on the application of management rights to individual employees was a term and condition of employment in and of itself. If the parties did agree to this non-binding mechanism, and the dispute was not resolved, the Commissioner of Education would be available to the employee for a final determination.

The following items have been held to be required subjects of bargaining by PERC or the courts under Chapter 123 (remember, you must negotiate concerning these if demanded by the union; you do not have to concede unless you desire to do so):⁴

Advisory arbitration for the application of management prerogatives to individual employees
Application of evaluation criteria to employees' terms and conditions, such as discipline (just cause)
Compensation
Disciplinary procedures for employees
Duty free lunch
Evaluation procedures that do not contravene statute or administrative code
Fair dismissal procedures
Grievance procedures
Holidays
Hours
Impact of most illegal decisions upon terms and conditions
Impact of RIF decisions for rified tenured teachers if incorporated into the contract⁵
Insurance
Job security (for employees not covered by tenure)
Length of the collective bargaining agreement
Lesson plans, teacher possession of
Payment for unused accumulated sick leave
Past practice clause
Personal leave
Personnel file, access to
Physical working conditions, smoking in teachers' lounge
Posting procedures
Preparation periods
Procedures for the selection and promotion of department chairpersons, other positions
Qualifications for increment⁶
Representation for teachers at student disciplinary hearings
Residency requirements
Sabbatical leave
Safety issues
Teacher-pupil contact time
Tuition reimbursement
Vacations
Work load

4 If a panel of the Appellate Division took a position opposite PERC, the court position is the one listed here.

5 In *Maywood 168 NJ Super 45*, the Appellate Division ruled that there is no obligation to bargain over the impact of a RIF decision at the time of the RIF. This does not prohibit a contract from providing for benefits for tenured teachers if and when they are rified.

6 PERC has not addressed this issue since *Bernards Township*.

Work day, length of
Work year, length of ⁷

The following items were determined by PERC or the lower courts to be permissive topics of negotiations. However, the New Jersey Supreme Court's decision in *Ridgefield Park* which struck down the permissive category has rendered these topics non-negotiable:

- Absenteeism and tardiness policies; however, discipline aspects of the policies are mandatorily negotiable
- Academic calendar
- Affirmative action plans
- Assignment
- Audio-visual equipment, use of
- Budget formulation
- Class size
- Contact time for students
- Curriculum
- Decision to assign bus, cafeteria, corridor and playground supervision
- Decision to reschedule snow days in teacher vacation period
- Decision to go to split sessions
- Facilities relating to the educational process
- Lesson plans, format of
- Productivity studies
- Qualifications for employment
- Qualifications for promotion
- Staffing, number of employees
- Student safety
- Student testing
- Sunshine bargaining
- Transfer
- Use of teacher aides

The following items have specifically been held to be illegal topics of bargaining, because they contravene specific statutes or regulations:

- Agency shop
- Decision to RIF
- Early retirement incentives
- Evaluation criteria
- Extended sick leave
- Impact of RIF on remaining teachers,
on rified non-tenured teachers, and
on rified tenured teachers at the time of the RIF.
- Maintenance of membership
- Non-renewals
- Parity
- Pensions
- Procedures for RIF
- Seniority provisions inconsistent with 18A
- Student grievance procedures
- Withholding of increments ⁸

⁷ This is generally mandatory for public employees, however, for teachers it is mandatory only to those days in excess of the 180 minimum required for state aid.

⁸ PERC had held this to be a mandatorily negotiable topic; however, the *Bernards Township* decision found this to be a management prerogative which could not be bargained or arbitrated.

Employee Grievances

The negotiation of a contract is only one part of the obligations of labor relations. Labor unions and employers are continuously engaged in the administration of the completed agreement.

When the Supreme Court addressed the whole range of public sector labor relations in August, 1978, it devoted a good part of its attention to grievability.

The following article is based on the Supreme Court cases of August 1978, and subsequent PERC and court decisions.

1. What May be Grieved

In *West Windsor*,¹ the Court clearly held that employees have the right to appeal the interpretation, application, or violation of policies, agreements, and administrative decisions affecting them. The phrase "affecting them" means "concerning terms and conditions of employment." Thus, an employee has a statutory right to present a grievance alleging that any policy, agreement or administrative decision which sets a term and condition of employment has been misinterpreted, misapplied or violated by the board or its agents (supervisors). For example, if the board has a policy on mileage reimbursement, any employee in the bargaining unit must be able to grieve an alleged violation of that policy. This is true even though the matter (a term and condition of employment) is not set in the labor agreement.

Employees under *West Windsor* do not have the right to present grievances on matters which are not terms and conditions of employment. For example, because curriculum is not a term and condition of employment, employees have no right to grieve over changes in curriculum.

A recent Supreme Court decision involving *Bernards Township Board of Education*, however, states that unions have a right to demand in negotiations that the contract permit grievances over the applicability of managerial decisions to particular employees.² Such grievances may be pursued up to advisory arbitration; they may not be brought to binding arbitration.

There are two major distinctions between *West Windsor* and *Bernards Township* that must be emphasized. *West Windsor* states that the right to grieve over terms and conditions of employment is a statutory right; unions need not demand this in bargaining, because it is a right set by law which, in fact, they could not negotiate away even if they were willing to do so. *Bernards Township* states, on the other hand, that unions have a right to negotiate over grievance procedures for the application of managerial prerogatives, such as the withholding of an increment. A contractual procedure for grievances over such matters is not a right, but only a negotiable topic. Boards must treat it like all other required topics for negotiations - discuss the union proposals (if any are made) and agree to none, all or part of those proposals.

It is important to note that the *Bernards Township* decision does not permit all managerial decisions to be subject to a negotiated grievance procedure. The Court specifically states that the applicability of managerial decisions to individual employees can, if so negotiated, be grievable. A recent PERC decision likewise limited its interpretation of *Bernards Township* to permit grievances on the applicability of managerial decisions.³ It appears that the only legal grievances over managerial decisions would be those involving the applicability of managerial decisions to individual employees.

The second major item to recognize is that a grievance procedure covering the applicability of managerial prerogatives to particular employees cannot end in binding arbitration. The Supreme Court was clear in its statement that permitting the applicability of managerial decisions to go to binding arbitration would significantly interfere in the exercise of non-negotiable managerial policy.

1 *West Windsor v. Public Employment Relations Commission and P.B.A. Local 130*, 78 NJ 98 (1978).

2 *Bernards Township Board of Education v. Bernards Township Education Association*, 79 NJ 311 (1979).

3 *Rutgers, The State University*, PERC No. 79-75, 5 NJPER 10106.

The Court reasoned that the availability of advisory arbitration for such decisions passes the two-factor test enunciated in *Ridgefield Park*, in that it:

- a) intimately and directly affects an employee's work and welfare, because it may be good for employee morale to present one's case to a neutral party, and,
- b) it does not significantly interfere in managerial prerogatives because it is non-binding and thus does not involve an illegal delegation of the authority of the local board or the Commissioner to an outsider with no public accountability.

Employees retain the right to bring their complaints to the Commissioner regarding non-negotiable matters, whether or not they have advisory arbitration for such topics.

2. Statutes and Grievance Procedures

In *West Windsor*, the Court also interpreted C.123 as requiring that employees be able to grieve the interpretation, application or claimed violation of any statute or regulation which sets terms and conditions of employment.

Some statutes in Title 18A (and other related Titles) set terms and conditions of employment by establishing minimum levels of benefits (such as ten days sick leave), maximum levels of benefits or a specific benefit. Administrative agencies, such as the State Board of Education, set regulations pursuant to law. Some of these regulations set terms and conditions of employment. For example, evaluation regulations set some terms and conditions that PERC would have found to be negotiable.

In the year since *West Windsor* was decided, there has been little litigation as to its effect on grievances over statutes or regulations. Few unions have pressed grievances over statutory violations. It may be that the problems regarding arbitration over statutes and regulations are so great that unions are no more interested in that development than are employers.

The most critical reaction by school boards in this area is to make their contracts very clear about what grievances may go to arbitration. See "Negotiating Effective Grievance Procedures," immediately following this article.

3. What Grievance Procedure Is Required?

The Court in *West Windsor* very clearly noted that the right of an employee to grieve is limited to the right to present grievances at the first step of a procedure. According to the Court:

The procedural details of the grievance mechanism remain negotiable and are to be set by the negotiating parties. We agree with PERC that the parties are free to provide for a significantly narrower definition of the matters which are grievable beyond the initial presentation stage. Moreover, the decision whether to utilize binding arbitration as a means for grievance resolution is a procedural detail left to the parties to adopt or reject as the terminal step of the contractual grievance mechanism. The parties are free to agree to arbitrate all, some, or none of the matters as to which the employees' right to grieve is guaranteed by N.J.S.A. 34:13A-5.3.

The Court also endorsed the concept that different types of grievances could be submitted to either different grievance procedures or could end at different levels in the same procedure. For example, a board might agree to allow grievances over administrative decisions and policies affecting terms and conditions of employment to be grieved only to the board level and no further. Grievances over the express terms of the contract might go to arbitration.

4. The Union's Right to Grieve

The Court, in *Red Bank Regional*,⁴ also addressed whether the union has a right under C.123 to present grievances and whether it may negotiate away that right.

⁴ *Red Bank Regional Education Association and Red Bank Regional High School Board of Education*, 78 NJ 122 (1978).

Public employees cannot be limited to presenting their grievances personally. The Court said:

The statute must be read as according the majority representative, by virtue of its status as the constitutional representative of the unit employees, the right to initiate an organizational grievance when requested to do so by a unit employee who claims that he has been aggrieved by an action of the public employer.

The Court went on to say that a union could not waive this right to initiate grievances through negotiations.

Some boards have successfully negotiated that while a union could process grievances, some proof of the employees' consent must be given. The Court struck down such limitations stating:

Nevertheless, it is important to note that the question of consensual initiation of any organizational grievance would not be a legitimate matter of concern for the public employer. Its obligation to accept organizational grievances is not conditioned on its verification that the affected employee has consented to the filing of the grievance. So far as it is concerned, all organizational grievances are consensual.

5. Summary

A. Employees have a right to present (file) a grievance at one step regarding an employer's alleged incorrect interpretation, application or violation of policies, agreements and administrative decisions, statutes and administrative regulations setting terms and conditions of employment.

B. This right goes only to the initiation of a grievance. Different types of negotiable matters may go to different grievance procedures.

C. Some grievances may be arbitrable while others stop at the board level.

D. Unions can request negotiations to establish a grievance procedure to cover the applicability of managerial prerogatives to individual employees, but such a procedure may not end at binding arbitration.

E. The union has a right to process grievances on behalf of employees without proving to the employer that employees desire the grievances to be processed.

Negotiating Effective Grievance Procedures

In the preceding article we reviewed the key holdings relating to grievances and arbitration arising from West Windsor and other cases. There, and in our commentary on the NJEA Sample Agreement, we have urged you to do two things:

1. Negotiate separate grievance procedures for different types of grievances or negotiate a different last step for different types of grievances, and,
2. If you do agree to binding grievance arbitration, very precisely define what is arbitrable.

"Multi-track" Grievance Procedures

PERC and the Supreme Court have endorsed the legality of negotiating different grievance procedures or different final steps within a grievance procedure for different kinds of grievances. The key question is, "what kind of grievances should be permitted to go to binding arbitration?"

The need for different terminal steps is highlighted by the Supreme Court's West Windsor decision. That decision emphasizes the right of employees to file grievances regarding any term or condition of employment. Many terms and conditions, however, are not created by negotiations. They are set in board policy, administrative action, and various statutes and regulations.

Arbitration, by contrast, is a procedure with a history of application only to negotiated agreements (commercial as well as labor). It is a process based primarily on uncovering the intent of the parties when they negotiated the agreement.

Arbitration seems like the wrong process for settling disputes over anything but negotiated contract language. Many arbitrators agree with this and, unless given a clear mandate by the parties, will avoid rendering a decision based on the interpretation of statutes, policies, or administrative decisions that are not related to or referenced in the negotiated agreement. These arbitrators realize that their skills and knowledge are the outcome of years of arbitration over two-party contracts, and were never intended to apply to statutes, management policies, or administrative decisions.

Many boards have adopted this approach. A recent NJSBA study notes that 58% of districts permit arbitration over alleged teacher contract violations.¹ Only 30%, however, expressly permit arbitration over board policy and administrative decisions. About 38% of teacher contracts permit grievances over such matters to go no further than the school board, and another 33% stop such grievances at advisory arbitration.

Complaint Procedures

The NJSBA has long advised that school boards provide a method by which employees could express their interests and concerns about educational matters in the district. Such a procedure, be it called a "suggestion box," a liaison committee, or a complaint procedure, encourages professional staff input on problems within their legitimate interests and expertise.

Such procedures, because they do not concern terms and conditions of employment, seemed not to be legally negotiable after *Ridgefield Park*. They were topics for unilateral management action. The recent *Bernards Township* decision, described in the preceding article, has modified this somewhat.

Unions can demand negotiations over the establishment of a procedure to cover grievances over the application of managerial prerogatives to individual employees. Such procedures may not end in binding arbitration. They may go to advisory arbitration if the parties so agree.

Before agreeing to any contractual procedure to cover such "grievances," however, a board should ask itself and the union the following questions:

- What actual problems exist now that cannot be resolved informally? Agreement to such a procedure may generate formal complaints over matters that are now routinely discussed and resolved informally between staff and the administration. In such a situation, no change is desirable.
- What is the present procedure for handling such matters? If such a procedure exists, and it has worked in the past, there is no need for change.
- Exactly what kinds of matters would be covered by this procedure? Loosely worded definitions will cause future problems. The legal limits discussed in the preceding article must prevail.
- What is the proposed terminal step?

As stated above, arbitration over matters that do not concern the negotiated agreement may not be good for either party. Advisory arbitration over the exercise of management prerogatives is an even stranger use of the process: 1) the arbitrator is not an expert in the educational matters that might be covered by such a procedure; 2) the matters were never subject to the negotiations process; and 3) the award is not binding, which eliminates the traditional value of arbitration as providing a fast, inexpensive and final resolution to grievances.

It is probable that this demand will never be raised in most districts, in which case retaining your present system for addressing employee concerns on non-negotiable matters is recommended.

The Arbitration Clause

Some boards have or will agree to submit certain disputes over required topics of bargaining to an arbitrator for resolution. There is no requirement to have arbitration over any dispute. And if you do agree to arbitrate, you may send as many or as few matters to arbitration as the parties agree upon across the bargaining table.

¹ An Analysis of Teachers' Contracts in New Jersey 1978-79.

Generally, boards have sought to limit arbitration to disputes over the specific terms of the agreement. Some boards even specify which contract clauses are arbitrable, and which are not.

Because "policies and administrative decisions" are now grievable, and State statutes and administrative agency rules and regulations are also grievable, boards should avoid agreements that would result in arbitration of any of these matters.

In order to limit what may be arbitrated, the contract should contain an express limitation such as the following:

The only grievances which may be arbitrated are those alleging that there has been a violation of the express written terms of the locally negotiated agreement.

The arbitrator shall have no authority to rule on grievances which concern the interpretation, application, or alleged violation of board policies and administrative decisions affecting terms and conditions of employment, or of statutes and regulations setting terms and conditions of employment.

State Law, Rules and Regulations

In the State of New Jersey decision, the Court stated that the parties may negotiate to include administrative agency appeal procedures as the terminal step in the grievance process for certain laws and rules setting terms and conditions. For example, employees have a right to appeal board decisions through the Commissioner of Education/State Board review procedure established in Title 18A. Now, according to the Court, those same procedures may be included as a final step in the grievance procedure. The Court said that the parties must "expressly" agree to include these review procedures in the contract if they want them available to employees. This raises the possibility that these procedures are not available to the employee unless actually included in the negotiated agreement.²

A board which desires to have alleged violations of these statutes and administrative rules and regulations reviewed by the Commissioner and State Board might then specify that express contract violations would be arbitrated; alleged violation of statutes and rules affecting terms and conditions would go through Commissioner/State Board review procedures; and alleged violations of policies and administrative decisions would stop at the board level. There would then be three separate terminal steps for three kinds of grievances.

Summary

The board should carefully weigh all elements of the grievance procedure. The only requirements are that:

1. You have a grievance procedure.
2. It be written and placed into the contract.
3. It allows employees or their representatives to appeal the interpretation, application or violation of policies, agreements and administrative decisions affecting terms and conditions of employment.
4. You must negotiate in good faith on all other elements of the procedure.

² Fairview Board of Education, PERC No. 79-34, 5 NJPER 10019.

An Analysis of Selected Contract Clauses

Collective bargaining agreements in New Jersey public education normally contain from a half dozen to thirty or more contract clauses. While there is no end to the imagination that the parties to the bargaining process use when drafting contract provisions and language, most contracts contain clauses on these issues:

1. Recognition clause
2. Grievance procedure
3. Salary schedule
4. Fringe benefit provisions
5. Duration of agreement clause

The recognition clause specifies what positions are covered by the collective bargaining contract, by listing inclusions ("all certificated staff") and exclusions ("except the Superintendent, Assistant Superintendent, principals and department chairpersons") with some modifiers ("regularly employed full time").

Almost all contracts provide for some sort of grievance procedure, whereby alleged violations of the contract or board policy, or administrative decisions affecting employees' terms and conditions, may be appealed. 58% of all teachers' contracts provide that binding arbitration be utilized as a method for resolving grievances over contract language, 31% provide for advisory arbitration, and 12% have the board as the terminal step of the grievance procedure.¹

Salary guides and fringe benefit clauses set out the various financial rewards that your employees receive. While most health benefits (hospital/surgical, major medical, dental, optical) are normally negotiated either as "employee only" or "employee and dependent coverage," it can be defined in terms of a dollar amount (\$100 per employee).

Virtually all contracts provide for a "duration of agreement clause," which clearly states when the contract expires. In some cases, wage or other reopeners are agreed to when the contract is of multi-year duration. (Approximately 40% of all contracts are multi-year).

Besides these "standard" contract clauses, other provisions are fairly common in board-teacher contracts in New Jersey, including sabbatical leave, tuition reimbursement, and personal leave. An analysis of the components of these kinds of clauses is useful, in that you can detect common problems in actual contract language and union proposals. A working knowledge of the components of common contract clauses will also be useful when you attempt to draft management proposals that satisfy the board's needs.

The following analysis provides examples of three typical contract clauses. The figures used regarding number of leaves granted, percent of tuition cost that will be used, and all other quantitative and financial provisions are included as illustrations only. The NJSBA is not recommending that you adopt these figures in your contract, but only that some specification regarding such figures appear in your contract, if you choose to agree to any of these clauses.

SABBATICAL LEAVE

Sabbatical leave provisions originated in higher education. Today many school districts also grant leave with pay to teachers in order to travel, rest or study. But the provisions of sabbatical leave contract clauses vary tremendously from district to district. To analyze a sabbatical leave provision, you should be familiar with the typical components of such a clause:

1. Eligibility requirements. Seven years? Eight years? Continuous, consecutive, or uninterrupted service?
2. Length of leave. One year, one-half year, or three summers?
3. Rate of pay. Full, half or 75%?
4. Purposes of the leave. Rest, travel, or study?
5. Number/percent to be granted. One, two, three or 3%?

¹ See NJSBA's *An Analysis of Teachers' Contracts in New Jersey, 1978-79*, available from your board secretary.

6. Continuation of benefits while on leave. Only pension deductions, or Blue Cross/Blue Shield as well?
7. Salary schedule adjustment upon return. Will the grantee be placed where he would have been had he not gone on a sabbatical?
8. Return service obligation. Does the grantee have to agree to serve in the district two years upon return, or three years?
9. Procedures for application and selection. Forms, notice, timelines.
10. Criteria for selection. First come, first serve?
11. Verification of fulfillment of purpose. Transcripts, progress reports, etc.
12. Future leave eligibility. Another seven years?
13. Final authority. May/shall, discretionary or mandatory?
14. Miscellaneous. Cancellation, etc.

Not all sabbatical leave clauses have all of these components. An analysis of an actual sabbatical leave clause demonstrates this. Here's an actual sabbatical leave clause from a teacher-board contract in New Jersey:

(1) Eligibility (2) Final Authority (3) Length (4) Purpose	Any teacher who has served in the district for a period of (1) <i>not less than 7 years</i> (2) <i>may on recommendation of the Superintendent</i> be granted a leave of absence for a period of time (3) <i>up to one year</i> for the purpose of (4) <i>professional improvement through study or travel.</i>
Application Procedures	<i>The teacher's request for a sabbatical should outline in detail the proposed professional improvement plan. The initial request for a sabbatical shall be made prior to November 1 of the school year for which the leave of absence is desired. Final details shall be submitted by December 1 and shall be approved or rejected by January 15.</i>
Number	<i>The number of teachers that shall be permitted to take sabbatical leave in any one year shall not exceed 4% of the total teaching staff.</i>
Selection Criteria	<i>Purpose, date of application, and length of service will be factors in determining the number of grants and the recipients within the budgetary limits for that year.</i>
Rate of Pay	<i>During this leave of absence the teacher shall continue in the employ of the board and shall receive an annual compensation equal to 3/4 of his annual salary. From this compensation shall be made the regular deductions for TPAF and other deductions required by law or at the request of the teacher.</i>
Return Service Obligation	<i>As a condition for the granting of this sabbatical, the teacher shall enter into a contract with the Board to continue in service for a period of two years after the expiration of the leave of absence. Upon failure to continue in service for a period of at least two years, the teacher may be required to repay the board for the salary received while on sabbatical.</i>
Salary Schedule Adjustment	<i>Upon return from the sabbatical leave, a teacher shall be placed on the salary schedule at the level which he would have received had he not gone on sabbatical.</i>

Not all of the components described earlier are present in the above clause. The following clause does incorporate the necessary ingredients of good sabbatical leave contract language:

1. A teacher who has successfully completed seven years of teaching in

Ideal School District may be granted a sabbatical leave of one year's duration for the purposes of graduate study in the area of the teacher's assignment.

This clause contains the eligibility requirements (7 years), the purpose of the leave (graduate study), limits study to courses relevant to the teacher's assignment, uses the word "may," and specifies the length of the leave (1 year).

2. *Applications for a leave beginning in the fall must be made by November 1 of the preceding year. All applications must be made on the form developed by the Superintendent. A decision by the board will be made by March 1 preceding the sabbatical year.*

This clause specifies application procedures. Make sure that enough time is allowed for board decision-making.

3. *No more than two teachers may be on sabbatical at any one time. Decisions will be based upon: a) purpose of the leave, b) teacher's performance, c) the needs of the district, d) the availability of budgetary funds.*

This clause specifies the number to be granted and selection criteria. Note the mention of budgetary constraints. Many arbitration decisions interpreting sabbatical leave clauses have told us that the use of "may" can be misleading. Permissive language can actually be transformed into "mandatory" language by the contract's wording. Be very careful to give the board not only discretion as to who receives a sabbatical, but also as to whether a sabbatical is given.

4. *A teacher on a sabbatical leave shall receive half of the salary he would have earned had he remained in the district. While on sabbatical, a teacher shall receive all benefits that he would have received if he had remained in the district, except for sick leave. Upon return to the district a teacher shall be placed on the guide where he would have been had he remained in the district, so long as the sabbatical's purpose was successfully completed.*

This clause specifies the salary and benefit arrangement that will be made while a teacher is on a sabbatical and how the teacher will be treated once he returns. Specification of these factors will eliminate inconsistent administration and make salary and benefit predictions more accurate.

5. *During the sabbatical year, a teacher must report two times each semester describing the progress he has made in fulfilling the purpose of the leave. Such report shall be filed using forms developed by the Superintendent. In addition, official transcripts must be submitted as soon as available.*

Few boards attempt to verify the fulfillment of the purpose of the sabbatical by requiring interim reports. Monitoring the progress of the sabbatical will maintain the integrity of this benefit.

6. *Upon return to the district from a sabbatical, the teacher agrees to remain in the employ of the district for at least two years, unless discharged by the Board. If a teacher fails to fulfill this obligation, he must repay the board all or a proportionate ratio of the salary he received while on sabbatical.*

This clause prevents a teacher from gaining extra education while employed by your board and then taking a job elsewhere.

7. *No teacher may be granted more than one sabbatical while in the employ of the district.*

Self-explanatory.

TUITION REIMBURSEMENT

Along with sabbaticals, many districts have negotiated contract provisions on tuition reimbursement. Tuition reimbursement is a benefit to teachers since accumulating college credits and earning graduate degrees allows teachers to move horizon-

tally on the salary guide. The Board may benefit as well, in that teachers are receiving extra instruction in order to become better teachers. The components of a tuition reimbursement clause include:

1. Eligibility of course. Graduate credits only? Area of teacher's assignment?
2. Application/approval procedures. Timelines, forms, etc.
3. Maximum annual number of credits per teacher. Three, six or twelve?
4. Maximum annual dollar amount or percent per teacher. Unlimited, \$500, or 75% of total cost?
5. Maximum dollar amount per year the district will spend on this item.
6. Verification and reimbursement procedures. Official transcripts?
7. Movement on the guide. Timelines, etc.

Not all contract clauses on tuition reimbursement contain these components. An analysis of an actual contract provision demonstrates this.

(1) Number of credits
(2) Eligibility

A teacher shall be eligible for a maximum of (1) six graduate or undergraduate credits annually under (2) the following criteria: a) courses must meet approval of Administrative Principal, b) they must be taken at an accredited college or university, c) teacher must earn a passing grade.

Percent of costs

The Board agrees to pay for half of the tuition costs (not including costs beyond credit hours).

Verification and
Reimbursement
Procedures

Funds will be reimbursed upon submission to the board of: a) evidence of participation, b) official proof of successful completion of course, and c) proof of tuition costs.

For the Board to receive a benefit from a tuition reimbursement clause, all of the components should be present. A good example might be:

1. Teachers who take graduate credits at an accredited college or university in areas of their current teaching assignment or upon request by the Superintendent shall be reimbursed at \$55 per credit hour up to a maximum of six credits per teacher.

This clause restricts the kinds of courses for which a teacher will be reimbursed to courses directly related to what the teacher is currently doing. An elementary school teacher would not be eligible for reimbursement for courses in administration under this contract provision. This clause puts a cap on the amount reimbursed per course at \$330.

2. Courses must be approved in advance by the Superintendent and a teacher must receive a C or better to be eligible for reimbursement. Official transcripts of the grade and proof of tuition cost must be submitted.

This clause eliminates disputes over what "successful" completion of a course is by using a "C" (or a B, etc.) Advanced approval eliminates confusion over what courses are within the teacher's area of assignment.

3. The maximum total payments to be made by the Board will not exceed \$5,000 during the 1980-81 school year. Applications for reimbursement will be approved based upon date of application and relevance of the course to the teacher's assignment.

This clause limits the pool of money available for reimbursement, which makes budgeting for this benefit much easier.

4. Teachers earning their MA or MA + 30 will be eligible for movement on the guide providing notification and transcripts are submitted by September 1 or February 1.

This clause allows horizontal movement at the beginning of each semester.

PERSONAL LEAVE

Personal leave clauses are found in almost all New Jersey teachers' contracts. 494 out of 506 districts sampled for 1978-79 offered personal leave for business that could not be handled outside of school hours. But the kinds of personal leave provisions in teacher contracts are quite varied. Some are complex, some liberal, some simple, some brief. Components of a typical personal leave clause include:

1. Number days per teacher.
2. Application procedures. Notice; reasons.
3. Purpose. Personal business? Religious? Legal?
4. Administrative discretion.
5. Restrictions. Not before or after a holiday.
6. Cumulative or non-cumulative.
7. Maximum number absent at any one time. 2% of staff?

An analysis of an actual leave clause shows the following:

(1) Number of days	Up to (1) four days per school year, (2) non-cumulative and non-consecutive, may be granted for (3) urgent personal business that cannot be attended to other than during the work day.
(2) Non-cumulative	
(3) Purpose	
Application Procedures	The request form must be submitted at least 5 days in advance of the personal day. All other requests shall be deemed as emergencies, and the responsible administrator shall use his discretion in approving or disapproving the request. When the request is denied, the reason for the denial shall be written on the form and returned to the applicant.
Restrictions	Leave will not be granted the day preceding or the day following a board approved holiday, recess, or in-service workshop, except in cases of religious observance.

An analysis of the above clause includes several deficiencies, which the following clause tries to correct.

1. Up to three days personal leave may be granted to a teacher during a school year for personal business that cannot be handled outside of school hours such as legal requirements, house closings, marriage of relative or close friend and other reasons by approval of the Superintendent. Such leave shall not be cumulative.

Using examples of what kinds of reasons are legitimate, or excluding some reasons makes sense.

2. Requests for leave must be made five days prior to the date requested off except in cases of emergency. Such requests must state the reason the personal leave will be used for.

Notice is essential to good personnel planning. It is important that the Superintendent know the reason for the leave so it can either be approved or denied.

3. Personal leave will not be granted before or after a holiday or school vacation unless the leave is for religious observance or an emergency.

Self-explanatory.

4. No more than 3% of the staff may receive the same day off for personal leave except in cases of emergency. The Superintendent has discretion in all cases to approve or disapprove the leave requests.

This assures adequate class coverage by scheduling a limited number of staff out on personal leave at any one time.

SUMMARY

Writing good contract language is an art and a science. The pressures of last minute settlements, the midnight hour, and sometimes third party neutrals can lead to the drafting of contract language that hurts management. One tuition reimbursement clause may be identical to another with regard to amount of money reimbursed per credit and number of credits allowed. But the other components of a good tuition reimbursement clause can be just as important as the economic aspects. Too many times, management's hands have been tied because of inartfully written contract language.

Analyze some of your contract clauses. Compare them to neighboring districts. Find out what is missing and determine if it is worthwhile to have, and if so, prepare good language for board proposals at the table. You may find that gaining control over a sabbatical policy or a personal leave provision will be as beneficial to you as a low salary settlement and may be a lot easier to get.

Balancing Management Rights and the PERC Law

The ability of management to act unilaterally is significantly limited by the existence of a labor relations law imposing a duty to bargain. The critical point to recognize, however, is that management rights are not eliminated by the negotiations obligation; in some areas, in fact, the PERC law has no substantial effect upon management freedom.

Unfortunately, many school boards have been intimidated and confused by union demands to bargain, or threats to grieve or file unfair practice charges, following a board announcement regarding some planned managerial action. The reaction by boards has too frequently been to drop their planned action rather than become embroiled in negotiations, possible arbitration or court action, or unfair practice proceedings before PERC.

The following article attempts to distinguish those areas where school boards cannot act unilaterally from those where unilateral action is legal. It addresses negotiations, grievance arbitration, and discipline against union officials for valid reasons. There are certain questions in this area that PERC and the courts have not yet answered, so some of the conclusions below are tentative.

Required Subjects of Bargaining

The cornerstone of any labor relations system is the employer's duty to negotiate in good faith over required subjects of bargaining. The definition of required topics of bargaining is addressed elsewhere in this publication; the legal and practical meaning of good faith bargaining is described in last year's publication, *Negotiations* 79.

PERC has issued, through case decisions, some general rules governing how the concept of good faith bargaining over required topics applies in actual negotiations.

1. When there is a contract in effect, the employer cannot unilaterally change terms and conditions of employment covered by the contract. A union does not have to agree to reopen negotiations during the term of a contract upon the demand of the employer to change a term and condition of employment covered by that contract. Without that agreement by the union, the employer is prohibited from making the proposed change. This is true for terms and conditions implicitly covered by the contract under a "past practice" or "maintenance of benefits" clause as well as for items covered by specific language in the contract.

2. Upon the expiration of a contract, the employer must maintain all terms and conditions of employment defined by that contract during the period of negotiations for a successor agreement, up to the point of "genuine impasse." The Supreme Court ruled in a case involving the Galloway Township Board of Educa-

tion ¹ that this mandates payment of the salary increment provided under the expired contract to teachers who return to work in September before a successor labor agreement has been reached.

3. Upon reaching a genuine impasse, defined as completion of statutory impasse procedures, i.e. mediation and factfinding, and subsequent fruitless negotiations, an employer may impose his last offer on all remaining items. The negotiations obligation remains in effect. ²

4. An employer must negotiate proposed new rules or modifications of existing rules governing working conditions before they are established, even if the contract is silent on the issues involved. If the employer announces an intended change in working conditions not covered by the contract and the union fails to request negotiations over a long period of time, the union may be deemed to have waived its right to bargain, and the employer would be free to implement his changes. However, the filing of an unfair practice charge by the union alleging a refusal to bargain in good faith will be considered a demand to negotiate by PERC. ³

The standards for finding a refusal to bargain violation by PERC in cases such as this have not been clearly defined as of yet. They will likely center, as in other refusal to bargain cases, on the employer's "totality of conduct." ⁴ Was the union given clear notice of the intended change, with adequate time provided before the scheduled implementation for meaningful negotiations? Or did the employer attempt to implement the decision secretly, or withhold notice of the intended change until such a short time before its scheduled implementation as to preclude effective negotiations?

Decisions in this area will be rendered on a case-by-case basis, and the existence of an emergency forcing the employer to act quickly will be a relevant item for PERC's consideration.

5. If the employer announces an intended change in a term and condition of employment not covered expressly or implicitly by the contract during the term of the agreement, and the union demands negotiations, the employer must comply. Likewise, if the employer desires to change a term and condition not covered by the contract and demands that the union negotiate on that topic, the union would be obliged to so negotiate.

Illegal Subjects of Bargaining

The *Ridgefield Park* decision (see "The Scope of Negotiations," earlier in this publication) eliminated the "permissive" category of negotiations. All topics which were once considered permissively negotiable, and if negotiated, binding upon the parties for the duration of the agreement, are now in the category of illegal topics of bargaining. A contract clause on an illegal topic is invalid and unenforceable.

A school board, then, has the right to act unilaterally, without negotiations or fear of grievances or unfair practice violations, regarding all topics that are illegal subjects for negotiations. These include all matters of educational policy and managerial prerogative, such as class size, course content, criteria for evaluation and promotion, and the assignment of personnel.

Impact Bargaining

There is a battle going on between PERC and the Appellate Division regarding the correctness of PERC's "decision/impact" theory of negotiations. PERC had long held, prior to *Ridgefield Park*, that an employer must negotiate upon demand over the impact of a permissive decision upon terms and conditions of employment prior to implementation of the permissive decision. The decision itself was not mandatorily negotiable; its impact upon terms and conditions of employment was.

1 *Galloway Township Board of Education v. Galloway Township Education Association*, 78 NJ 25 (1978).

2 *City of Jersey City and Local 246, Jersey City Public Employees, Inc.* PERC No. 77-58, 3 NJPER 122, *Board of Education of the Township of Willingboro and Willingboro Education Association*, PERC No. 78-20, 3 NJPER 369.

3 *New Brunswick Board of Education and New Brunswick Education Association, Inc.*, PERC No. 78-47, 4 NJPER 4040.

4 See *Rutgers, The State University and Rutgers Council, AAUP*, PERC No. 76-13, 2 NJPER 13

PERC did not change its approach after *Ridgefield Park*; it stated that the impact of an illegal topic of negotiations upon terms and conditions of employment was mandatorily negotiable. The Appellate Court, in two separate cases, has held that there is no obligation to negotiate the impact of a management decision to implement a reduction in force.⁵ In both cases the Court specifically rejected the "decision/impact" theory advanced by PERC, as being an interpretation of C.123 that was contrary to *Ridgefield Park*. PERC, however, believes that these court decisions misunderstand the basis for impact bargaining. While bound to these decisions, PERC has stated that it will limit their application to cases involving reductions in force.⁶ A Supreme Court decision on impact negotiations seems inevitable.

In most cases involving PERC's application of the "decision/impact" theory, the distinctions are clear and the limited negotiation obligation reasonable. The major question that arises concerns the timelines for implementing a non-negotiable decision that would impact upon terms and conditions of employment.

- Does a board have to reach agreement or genuine impasse on all impacts before it implements an educational policy decision?
- Is it sufficient merely to provide timely notice to the union of the decision and its scheduled implementation, and to respond in good faith to a union demand to negotiate, whether or not impact negotiations successfully conclude before the implementation of the decision?
- Does the existence of an external force pressuring the employer to make the decision affect the duty to bargain over impacts prior to implementation?

In a case involving the Edison Township Board of Education,⁷ (decided prior to *Ridgefield Park*) PERC ruled that an employer's decision to alter the student calendar to make up instructional days lost due to inclement weather was a "permissive" topic and did not have to be negotiated. PERC found that changes in the teacher work year were necessitated by changes in the school calendar in order to meet the board's required educational responsibilities, the scheduling of at least 180 days of student instruction. Such changes in the teachers' work schedule, therefore, were not subject to mandatory negotiations, "either as a direct change in terms and conditions of employment or as the impact of the board's educational policy decision necessitated by the lost snow days."

The board was found not guilty of a refusal to bargain in its decision to cancel one scheduled holiday that had occurred prior to the PERC determination, and two others scheduled for the immediate future. PERC stated, however, that upon the request of the union the Board would be required to negotiate over other "impacts" the rescheduling decision had upon teachers, such as lost vacation deposits and job opportunities.

The board subsequently refused to negotiate over these "impacts" arguing, among other things, that lost vacation deposits and job opportunities, and disrupted family plans, were not terms and conditions of employment within the meaning of the Act. PERC did not agree and held that the board, regarding its refusal to negotiate over the impact of its permissive decision to alter the student calendar, violated the Act.⁸

In another case,⁹ PERC ruled that a board's decision to switch to split sessions

5 *Maywood Board of Education and Maywood Education Association*, 168 NJ Super 45 (1979); *Cinnaminson Township Board of Education and Cinnaminson Township Teachers Association*, ___ NJ Super ___ (June 1, 1979).

6 *Camden Administrators Council, Local 39 and Board of Education of the City of Camden*, PERC No. 80-3, 5 NJPER 10157.

7 *Edison Township Board of Education and Edison Township Education Association*, PERC No. 78-53, 4 NJPER 4070.

8 *Edison Township Board of Education and Edison Township Education Association*, PERC No. 79-1, 4 NJPER 4152.

9 *Warren Hills Regional Board of Education and Warren Hills Regional Education Association*, PERC No. 78-69, 4 NJPER 4094. For a recent PERC decision with strong language supporting management on this topic, see *New Jersey Institute of Technology and Newark College of Engineering Professional Staff Association*, PERC No. 80-27, ___ NJPER ___, (August 28, 1979).

was a permissive decision; the Commission further ruled that although "the decision necessarily affected teachers' terms and conditions of employment, that fact does not change the right of the Board to make the decision."

The Association would have us find a violation because hours, workload and other terms and conditions of employment were changed. As stated above, we acknowledge that there were changes in terms and conditions of employment which, in the abstract, were mandatorily negotiable. But that does not change the fact that the Board's decision itself was not mandatorily negotiable nor that . . . the Association did not request negotiations regarding the impact of the Board's decision until shortly prior to the implementation.

Two aspects of the case are critical: the external factors forcing the board to go to split sessions, and the failure of the union to demand negotiations for an extended period of time. On the first point, the board had lost access to a facility it had rented the previous year to accommodate a large student population. Like the Edison case, the board had to make and implement its decision, despite the impact on teachers' working conditions, in order to meet its required educational responsibilities: the operation of the district. Regarding the second point, PERC notes that the union had notice in February that the intended change would be effective in September, and made no demand to negotiate impact until August.

In these cases, involving snow days and the loss of a building, the "necessary impacts" upon terms and conditions of employment connected to the implementation of a "permissive" decision were not themselves mandatorily negotiable. The required impact negotiations in these cases concerned other terms and conditions of the teachers who were affected by the permissive decisions.

The union demands in Warren Hills Regional included demands that no teacher be assigned more than five periods of instruction per day, that split session teacher assignments be made by seniority, that the length of teaching periods for all teachers in the district be uniform, that teachers from one split session who were asked to substitute during the other session receive extra pay and that all teachers on split sessions be paid an additional \$3,000. The board only agreed to extra pay for split session teachers who substitute in the other session, and PERC held that it had bargained in good faith over the impact of its permissive decision.

In a recent decision, PERC held that a school board must negotiate over the effect of its managerial decisions related to running schools during a strike upon non-striking employees' terms and conditions. However, because the board's primary responsibility was to cope with the emergency, the negotiations obligation could be suspended temporarily, and resume only when it was practical for the employer.¹⁰

The Camden Administrators Council decision by PERC indicates an emerging recognition by PERC that the duty to negotiate "impact" cannot frustrate the public employer's obligation to make and implement managerial decisions. In a strike situation, the duty to bargain can be temporarily suspended with respect to non-strikers, so that the employer can respond to the emergency with maximum effectiveness.

It is likely that, if impact bargaining survives Supreme Court review, PERC will decide cases alleging refusals to negotiate according to the specific facts in each case. School boards should be willing to sit down with their unions and negotiate over the impact of a planned educational or managerial action upon employees' working conditions. The following guidelines should assist boards in balancing their management rights with their duty to bargain in this area:

- Be willing to sit and discuss with the union the intended actions
- Put the burden on the union to prove to you that there will be an effect on their working conditions when the planned action is implemented. It is not enough that the union prefers the status quo; the union must show you exactly how teachers' working hours, compensation, fringe benefits and other required topics of negotiations will be affected. If the union cannot satisfy you as to the

¹⁰ Camden Administrators Council, Local 39 and Board of Education of the City of Camden, PERC No. 80-3, 5 NJPER 10157.

existence of an impact on terms and conditions, there can be nothing for you to negotiate.

- **Announce the date of implementation as soon as it is known, and use that date as a deadline to spur negotiations to completion.** You should not be forced to delay implementation of educational decisions because of endless, fruitless negotiations over impact. If negotiations go to impasse, contact PERC immediately, requesting mediation and notifying PERC of the scheduled implementation date. If you are forced to implement prior to conclusion of negotiations, as in Edison, Warren Hills Regional, and Camden Administrators, these efforts may avoid findings of bad faith in negotiations.
- **Examine your present contract and your negotiations history.** Suppose your contract provides a certain benefit (such as two personal days for any reason) and the union during impact bargaining simply seeks to improve that benefit in reaction to your change in the academic calendar. Your response could be that the union negotiated that benefit level with full knowledge that the board could change the calendar at any time, and thus your contract already covers the "impact" of a change in the academic calendar. If the union once sought a particular benefit in negotiations, such as extra payment in the event that teachers were assigned to teach more than three subject areas, and failed to win a concession from the board during negotiations, it should not be allowed to resurrect that demand during impact bargaining. The union, by dropping its demand related to that known possibility, has waived its right to seek that benefit when the board begins to make such assignments. (See "Union Waivers," later in this article.)
- **As in all good faith bargaining, the obligation to negotiate does not mean there is an obligation to concede.** If you are not convinced the impact is significant or you believe the educational changes you've made could reasonably be expected by teachers because education must be flexible and responsive to the needs of children, you may feel no need to concede to any of the union demands.

State Law and Union Waivers

There are two other relevant considerations when determining if an employer has the authority to change terms and conditions of employment without negotiations.

A. State Law. If the State Legislature enacts a statute which requires a term and condition of employment, the school board must make that change. It is relieved from the obligation to negotiate. Likewise, if a court finds that a contract clause illegally curtails board discretion on a matter covered by law, the board may thereafter refuse to enforce that contract clause. A clause which provides an illegal benefit to employees, such as early retirement incentive plans, cannot be enforced by the board.¹¹

B. Union Waivers. The board may retain its right to act without negotiations on required subjects of bargaining in a number of circumstances:

1. **Where the union has expressly given up its rights in the written agreement.** For example, the union may agree to this clause: "During the term of this agreement the Board may make changes in the health insurance coverage of employees consistent with the economic needs of the district." This specifically frees the board to make unilateral changes in health insurance coverage.

2. **Where the union fails to achieve certain gains in negotiations.** Often, the union will bring specific demands to the bargaining table which are abandoned during the course of negotiations. For example, the union might seek a clause prohibiting the board from scheduling faculty meetings without two days notice, and then drop the demand. The board could thereafter argue that it has the right to schedule such conferences without negotiations.¹² This is distinguishable from those terms and conditions which are, implicitly or expressly, covered by the con-

11 *Fair Lawn Education Association v. Fair Lawn Board of Education v. Teachers Pension and Annuity Fund*, 79 NJ 574 (1979).

12 See *Township of West Windsor and West Windsor P.B.A. Local 271*, PERC No. 79-79, 5 NJPER 10110.

tract, or which are not covered by the contract but over which there have never been discussions or negotiations; without the latter there could have been no union waiver.

3. Where, during negotiations, the union expressly agrees that the employer can change terms and conditions unilaterally. In one decision, PERC ruled that a State of New Jersey union agreed to allow the State to change meal and mileage reimbursements when it set a cut-off date for negotiations on these two items.¹³

Summary Regarding Negotiations

Before attempting to make a unilateral change in an item affecting employees, the employer should do the following:

- Check PERC and court decisions defining the item as a required or illegal subject of bargaining.
- Look for limitations in the present contract in either specific or general clauses.
- Notify the union in as timely a fashion as possible of the intended changes so that if any negotiations obligation exists, it can be met in an effective manner.

Remember that the board's legal rights to take unilateral actions affecting employees are still being defined by PERC and the courts, and in many areas remain unclear.

Remember also that negotiations is a very valuable problem-solving mechanism. Significant changes in district operations can usually be implemented amicably if both parties operate honestly and constructively. A board's technical legal rights to take unilateral action in certain cases can be useful in negotiations, but it should not become a blockade to productive discussion with employee organizations over matters of mutual and legitimate concern.

Grievances Over Management Actions

There is another indicator that PERC has become more sensitive to management rights. There has been a series of cases this year in which PERC restrained the arbitration of certain grievances. In all these cases, management had taken a certain action unilaterally and the union filed a grievance, regarding either the action itself or the effect of the action on terms and conditions of employment.

PERC carefully scrutinized the union grievances in these cases, and found that the grievances were really aimed at reversing the management prerogative involved, rather than seeking to protect employee rights. PERC refused to let these grievances go to arbitration, because to do so would interfere in non-negotiable management prerogatives.

In these cases, PERC found the union's contention that the grievances concerned negotiable topics to be a subterfuge. The Commission stated:

*It is the Commission's responsibility to sift through the . . . allegations set forth by the parties in order to fully effectuate the Supreme Court's recent scope of negotiations and grievance/arbitration pronouncements. Otherwise we risk finding a management prerogative, concealed under the cloak of a contractual just cause provision, to be arbitrable.*¹⁴

PERC will look beyond the literal description of the grievance to uncover what is termed the "gravamen," or crux, of the grievance. If the real goal is to tie management's hands in an area of educational policy or management prerogative, PERC will order that the grievance not be allowed to go to arbitration. PERC has used this approach to forbid arbitration over the elimination of a position,¹⁵ and the restructuring of department chairmanships.¹⁶

13 The State of New Jersey and Local 195, IFPTE and Local 518, SEIU, PERC No. 77-40, 3 NJPER 78; Rutgers, The State University and AFSCME, Council 52 and Local 1761, PERC No. 80-26, _NJPER_, (August 28, 1979).

14 East Orange Board of Education and East Orange Education Association, PERC No. 79-62, 5 NJPER 10071.

15 East Orange, Ibid.

16 Delaware Valley Regional High School District Board of Education and Delaware Valley Regional Teachers Association, PERC No. 79-69, 5 NJPER 10100.

Discipline and Discharge of Union Activists

One area of concern to public employers is the perception that union officials and activists have some special protections as employees because of their union status.

PERC has made it quite clear that public employers have the right to discipline or discharge union activists as long as the same standards are applied to all other employees, and the union activity is not a motivating factor in the decision to discipline or discharge.

Thus, in a number of recent cases, PERC has found public employers not guilty of violating the PERC law when a union activist or official was disciplined or discharged.¹⁷

Practically speaking, a board must be prepared to defend, with particular persuasiveness, a decision to discipline or discharge a union official or activist. Some PERC decisions too quickly shift the burden of proof to the employer in such cases, when the Commission's own standard clearly places the burden on the union bringing the charge. The inference that a union official, singled out for an adverse personnel action, is being discriminated against for his union connections is an easy and tempting one for a labor relations agency to make.

The lesson, however, is that a school board should not hesitate to discipline or not renew a union official out of fear of violating the PERC law, as long as the employee deserves the action for reasons unconnected to his union work. If the employer is not motivated, even in part, by a desire to discriminate for union activities, then his managerial action to discipline or discharge should not be reversed by PERC.

17 Pine Hill Board of Education and Pine Hill Education Association, PERC No. 79-98, 5 NJPER 10134; Western Monmouth Utilities Authority and Timothy Graham, PERC No. 79-97, 5 NJPER 10133; Rutgers, the State University and Rutgers University College Teachers Association, PERC No. 79-89, 5 NJPER 10125; and State of New Jersey And Local 195, IFPTE, PERC No. 79-46, 5 NJPER 10034. For a contrary finding, see Salem County Board for Vocational Education and Daniel McGonigle, PERC No. 79-99, 5 NJPER 10135.

The Use of Professional Negotiators

Most school board members who have spent time at the bargaining table would quickly admit collective negotiations in public education is a complicated and sophisticated process. A typical school district devotes anywhere from 70 to 80 percent of its budget to employees' salaries and fringe benefits. This enormous financial commitment is only part of the impact of bargaining. The practical impact on day-to-day school district operations must also be assessed. Therefore, whoever negotiates an employee-employer contract in public education has assumed an awesome responsibility that affects matters of finance and governance.

Who should negotiate and how should the negotiations be conducted are questions to which all school boards must address themselves if they wish to be well represented during negotiations.

At least six bargaining realities demand that the parties have the best possible representation at the table. They include the following:

A. Collective negotiations result in a binding agreement setting forth terms and conditions of employment. Once these terms and conditions of employment are negotiated, they are binding on a board for the length of the agreement, sometimes lasting three years. Mistakes made in negotiations can be extremely costly as they relate to the financial or administrative well-being of the district.

B. The ability of a school district to operate smoothly may hinge on specific contract language that, when negotiated, appears benign, but in practice may seriously handcuff school administrators from doing their job effectively. The nuances of contract language, for example, the distinction between "may" or "shall" in a sabatical leave clause, or an interpretation of the meaning of "whenever reasonable or

practicable," are potential trouble spots that require a specialist's attention.

C. The increasing use of binding arbitration as a final method of review in the resolution of grievances makes it incumbent on the participants in the bargaining process to completely understand and properly apply contract language to their greatest advantage. Failure to do so could result in adverse consequences that can have a serious impact on school district operations.

D. The technical nature of the field is becoming more, not less, complex. The practitioner who will adequately perform his/her duties must keep abreast of court decisions, PERC rulings, legislative changes in the law, etc. The negotiator must also be aware of those matters that indirectly affect the bargaining relationship, such as internal union politics, communications with the public and the press, and board/school administration relations.

E. Negotiations is extremely time consuming, requiring inordinate amounts of patience and perseverance, and frankly, is a thankless task to undertake. Only those who have been there before can truly understand this reality.

F. Teacher union negotiators are usually experienced and well trained advocates who have at their disposal organizational services perhaps unmatched anywhere in this country.

All these "facts of life" about collective negotiations demonstrate that the process requires increased professional attention.

Recognizing the growing need for increased professional involvement in school board-school employee bargaining, the Delegate Assembly of the New Jersey School Boards Association, in 1978, adopted a policy encouraging the use of a negotiations specialist. The policy statement suggests three approaches in using a negotiations specialist:

A. A full-time staff employee as assistant superintendent or director of employee relations should be entirely responsible for acting as the board's chief spokesperson in all employee negotiations.

B. A labor relations consultant to help the board prepare for bargaining and to advise the board during the course of negotiations should be hired. This individual would advise but ordinarily would not be present during negotiations.

C. A labor relations professional to assist the board in preparing for bargaining and to act as chief spokesperson for the board during negotiations should be employed.

The first option, hiring an in-house negotiations specialist, has obvious advantages. These individuals must not only address themselves to negotiating the contract, but must also administer the very contract they negotiated. They are more familiar with the school district, its procedures and past practices, and are readily available to serve all other members of the administrative team when questions of interpretation and/or implementation arise.

However, this option has definite drawbacks, particularly for smaller districts, which would have difficulty justifying the cost of such a position. Nevertheless, if smaller districts require the services of a negotiations specialist, they could hire an upper-level administrator whose responsibilities include, in part, bargaining and contract administration work.

The second option involves the services of a labor relations consultant, the extent of whose role in negotiations varies depending upon the specific circumstances, but does not include negotiations at the table. Consultants can do many of the bargaining tasks that either a full-time district employee or an outside professional negotiator can perform. Use of a consultant on a limited basis is helpful in the preparing stage of bargaining, in developing strategies concerning proposals and counterproposals, and suggesting specific tactics. Consultants may occasionally meet with the entire board or with the board's negotiating team and may even assume the role of chief spokesperson on certain occasions if the board thinks it desirable. If sufficient sophistication in negotiations already exists on the board, but technical and tactical advice is needed, a consultant may be helpful, at relatively little expense.

The last option concerns the use of professional negotiators. Professional negotiators can do all of the consultative work described above. However, the major difference in these arrangements is the actual presence of the professional during negotiations.

The value of a professional negotiator can be seen in a number of ways. First, the professional brings immediate expertise concerning bargaining strategy and contract language and helps to assess school district objectives in the process. Although

an advocate of management interests, a professional's objectivity regarding realistic bargaining expectations could be most helpful, and may, in fact, strengthen a school board's negotiating position. Second, the presence of a professional allows school managers to attend to their normal duties, rather than having to attend to the laborious tasks and time commitments associated with negotiations. Third, a negotiations professional will commonly absorb the punishments normally meted out to school board members during negotiations, thereby allowing personnel relations between the employer and staff to operate more smoothly. In fact, when professionals leave a district, they usually take much of the hostility generated during bargaining with them. Finally, a school district should see a professional as a resource person from whom administrative staff can develop their own level of competence in this area.

Despite some good reasons for hiring a negotiations specialist, most school districts have taken a different approach in the selection of a chief spokesperson. Data for the 1978-79 school year, based upon a representative sampling of 508 of the State's 593 operating school districts, indicated that:

- A. 53% of school boards used either a board member or the board president as chief negotiator.
- B. 5% of the districts used the superintendent of schools in this capacity.
- C. 3% of the districts have a staff professional who usually holds the title of assistant superintendent for personnel or director of personnel.
- D. 11% of the districts surveyed used their board attorney.
- E. And finally, 27% hired the services of an outside professional negotiator as chief spokesperson.

It should be noted that the data do not reflect arrangements where negotiations specialists are used as counsel and advisor to the board, and are not used as chief spokesperson.

It is obvious that not all school boards feel the need to hire an outside professional negotiator. In many districts where the board/union relationship is informal, friendly and productive, this is the best approach.

However, should your school district believe that it could benefit by using a labor relations specialist, here are some considerations that school board members should address. The school board should evaluate carefully the current state of employee-employer relations to determine whether a change in the type of chief spokesperson is warranted.

- A. Have negotiations been unusually long and difficult, with a negative effect on day-to-day relations between staff and administration?
- B. Has there been excessive time spent by district staff and board members on negotiations at the expense of other responsibilities?
- C. Has the board team believed, following negotiations, that a better contract could have been reached if certain mistakes had been avoided?
- D. Is the union team led by an outside negotiator, or by a district employee with many years of negotiating experience?
- E. Has the recent grievance and arbitration history shown an increase in employee dissatisfaction?
- F. Does the existing contract require significant revisions in contract language which would improve school management?

The answers to these questions suggest whether there is a need to hire a negotiations specialist. If there is a need, then the next step is to find an individual or firm that best suits your district's need.

In a sense, contracting the services of a professional negotiator is, in many ways, similar to deciding to use a particular physician or dentist. Much depends not only on his/her demonstrated skills and abilities, but also upon his/her ability to understand and relate to a client: therefore, the task of hiring a professional should not be taken lightly. Considering the potential impact, one way or the other, of a professional negotiator's efforts, a school board is making a most important decision. Here are some tips.

First of all, there are two basic types of professional negotiators: attorneys and non-attorneys, who may either work for themselves or for a firm, the latter being a more common arrangement. A school board should not necessarily reject one type of negotiator in preference for another until further inquiries and interviews are conducted.

The NJSBA Labor Relations Department is prepared to assist local school districts in the selection of a professional negotiator. The Department neither recommends nor endorses particular negotiators. Instead, the Department will provide school boards, upon request, with the names of members of the Educational Negotiators Association (ENA), an organization of professional negotiators working in New Jersey. Whether operating from this list or another source, a school district could request from any number of professional negotiators the names of the school districts that they currently represent and have represented. An interested school district would then make a preliminary inquiry about these negotiators by calling their current client districts. The next two steps would be to narrow down the number of professionals or firms and to request that perhaps, three to five come in for an interview. Another source of information is the NJSBA publication, *An Analysis of Teachers' Contracts in New Jersey 1978-79*, because it identifies which districts use a professional negotiator.

A good preliminary screening of candidates is important. A school district, if it asks the right questions of other districts using professionals, might be able to better assess its own need for an outside professional. Questions should refer to a professional's negotiating style, billing procedures, personality, responsiveness, and, of course, results. Once this screening is completed, the field of candidates should be narrowed down so that no unnecessary time is spent interviewing firms or individuals that the school board has already prejudged as unacceptable. School boards would be well served, once they begin the interviewing process, to keep an open mind until all the interviews have been completed and a full assessment of the professional's credentials have been made. (It is important to note that all professional negotiators gain and lose clients for many, sometimes complex, reasons. Any summary rejection of a candidate on the basis of lost clients without probing the reasons and the circumstances involved would be shortsighted.)

What do you ask a candidate during an interview? You ask many of the same questions you asked their client or former client districts before the interview, plus, of course, more. Although there is an unlimited number of questions a school board could ask, here are some suggested ones:

- A. What is your negotiating style?
 1. Negotiate alone or with other board members
 2. Demeanor at the table
- B. What is the range of services that you offer?
 1. Analysis of current contract
 2. Analysis of union proposals
 3. Drafting of counterproposals
 4. Mediation and factfinding
 5. PERC representation
 6. Other litigation
 7. In-service program for administrative staff.
- C. What are your fees?
 1. Hourly or retainer or both
 2. Expenses and travel
 3. Billing procedures
 4. Reasonable estimate of costs for purposes of budgeting
- D. What is the board's role in the negotiations process?
 1. Selection of board negotiating team
 2. Development of parameters
 3. Update meetings
- E. Who will do the negotiating?
 1. The interviewee or other members of the firm
 2. Board member participation in the actual negotiations
- F. How busy are you?
 1. Timely response to phone calls
 2. Availability for meetings and bargaining sessions
- G. What is your track record?
 1. Document results for client districts
 2. Strike history

There are probably many other questions that you can ask. Your decision to have a board member, the superintendent, the board attorney, a staff person or outside negotiations specialist should be based on the best interests of the entire district. Only you know what they are.

If you decide to hire a professional, what should be the appropriate relationship of the school board to the professional negotiator? The first point to remember is that this individual has been hired for his expertise and bargaining skills. The second point to keep in mind is that professional negotiators work for school boards. A professional negotiator does not impose his or her standards on a local school board. The balance has to be struck between the flexibility that a professional requires to do his job effectively and the interests that the school boards wish to protect.

A school board can ensure its adequate and timely involvement in the process by selecting a negotiating team of perhaps three regular members (never a majority) who are representative of the thinking of the entire board concerning negotiations strategies and expected outcomes. Board members must recognize, at the onset of bargaining, that counterproposals are just that; proposals, which realistically cannot expect to be incorporated in their entirety into the next contract. In much the same way that it would be unimaginable to envision the entire union proposal package being included in the contract, it is likewise approaching fantasy to expect that to happen to all the board's proposals.

Don't expect your professional negotiator to perform miracles; do expect him/her to get results that will improve the operations of the school district. Don't handcuff the expert by demanding that he/she get everything and give nothing. Chances are he/she will accomplish little under those circumstances.

The negotiations specialist is working for the school district, and requires its continued support and allegiance to perform effectively. Avoid any temptation to undercut your professional negotiator by dealing directly with the union without his/her knowledge or by making overtures of one sort or another in an effort to arrive at a quick settlement. These efforts, however well intended, are doomed to failure.

Both the school district and the professional negotiator have a mutual need to maintain a genuine and open relationship. The negotiator looks to the school board for its guidance about bargaining expectations and should note to the board, whenever appropriate, the disparity between these expectations and realistic bargaining outcomes. Moreover, school boards must clearly know the financial picture and must establish the framework within which a final settlement can be made. Both must be conveyed to the professional so that his/her ability to work on behalf of the board's interests is unimpaired. Simply stated, never mislead your specialist by withholding information on a position.

In return, a school board should expect full disclosure from its specialist concerning the direction of negotiations. Communication between the client district and the professional must be ongoing. It must engender mutual support and confidence, and must convey the message to the other side that the school board is united in its resolve to conclude an early satisfactory agreement.

Perhaps the most sensitive area in negotiator/school district relations is the fee structure and the total cost for services rendered. School districts would be well advised to view these services as an investment to which some measure of profit is entitled. Most professionals charge fees generally ranging from \$50 to \$80 an hour. These rates also may apply to travel time. Additional expenses are usually extra.

On the surface, these rates appear high, but if the dividends earned as a result of professional involvement in your negotiations are substantial, then the costs involved are justified. These dividends should take the form of improved employee-employer relations, better school management and financial savings. In addition, the costs should be weighed against the time involved having a board member or some other school district employee negotiating the agreement.

One final item to keep in mind concerning costs. The State teachers organization annually receives from each of its 85,000 professional members nearly \$100. In addition, each professional staff member pays \$35 annually to the national organization and usually lesser amounts to county and local affiliates. Much of this money is earmarked for bargaining and related activities. In the total, revenues generated by professional employees alone, excluding those paid by their non-professional counterparts, constitute annually a formidable financial capability to deliver a wide

range of negotiations services. In contrast, your investment may be a relatively small one to counter the scope and magnitude of protected employee bargaining interests.

The Role of Supervisors in Negotiations

Grievance Analysis

There is no more valuable resource for school boards in preparing for your next negotiations, especially regarding non-monetary items, than the record of contract administration under the old agreement. This record is established primarily through the contractual grievance procedure.

The purpose of a grievance procedure is two-fold:

1. to solve problems arising under the contract in an orderly fashion so as to permit the uninterrupted operation of the business while disputes over working conditions are being resolved, and
2. to uncover areas of the contract that will need attention in the next negotiations:
 - a) areas where management needs greater protection and/or freedom
 - b) areas where the rights and obligations of the parties are unclear
 - c) areas where one can reasonably anticipate a union demand for change

Your district should maintain a system for gathering and analyzing grievance information. This is more than a file of grievances submitted and their disposition. An analysis of grievances should include at a minimum:

- a) Number of grievances filed by topic
- b) Which contract clauses are most frequently cited?
- c) Which clauses are relied upon by management in responding?
- d) Are there classes of employees more prone to file grievances?
- e) What kinds of grievances most often go to arbitration and which, on the other hand, fall by the wayside?
- f) What is the rate of settlement of grievances at the supervisory level?
Rate of appeal?
- g) What is the disposition of grievances that center on the interpretation of contract language?

This analysis of grievances should be done by central office administrators in cooperation with building supervisors. Accurate records by supervisors are obviously critical to the usefulness of this effort. Grievance analysis relative to developing input for negotiations is a continuous process. It is also, unfortunately, a tedious, time-consuming, difficult process which some supervisors may resist doing. Nonetheless, the successful management of the school district demands that it be done.

Preparation for Negotiations

This grievance analysis is just one of the responsibilities of the first line supervisor in negotiations. His value to the negotiating team stems primarily from the specialized knowledge which he attains because of the position he holds in the district.

1. He knows the applied meaning of the contract for the employees he supervises. This can differ from the surface or intended meaning.
2. He knows which contract clauses are meaningful to employees and the union by the way in which they are monitored by them.
3. Conversely, he knows which sections of the contract are consistently abridged with no complaint or reaction by either side. In some districts, supervisors admit they consistently violate the letter of the contract without reaction by the union.
4. He knows his employees' desires perhaps better than anyone else in management, and can thus better predict their interests in the next negotiations, e.g. economic benefits, job security benefits, or increased leave time.
5. He may know the local union leadership better than anyone else in management, and can assess their level of support, their ability to lead, and the degree to which their interests are compatible or at odds with the rank and file employees.

6. He knows his needs in order to administer the educational system efficiently. He can pinpoint better than anyone which clauses presently tie his hands, and which ones tend to protect his managerial freedom. Proposed changes to the contract that can affect his work can be best evaluated by him.

A board will sometimes fight long and hard in negotiations to preserve or avoid language "in order to protect our supervisors" only to discover later that those supervisors view that item as inconsequential. Conversely, items of real importance to supervisors are sometimes given away by boards who don't recognize their importance.

During the period immediately prior to negotiations, then, supervisors should assist in the preparation process. Each supervisor should evaluate the present contract, and designate areas:

- 1) that he would like to see changed, how they should be changed, and what the anticipated outcome of the change would be

- 2) that he would like to see protected and what their value is to him as they are presently constructed

- 3) that he thinks will be connected to union demands, either as:

- additions
- deletions
- modifications

and what he anticipates as the impact of such a change upon the district and, most importantly, upon his area of supervision.

This should be done by individual supervisors. They should also be brought together to discuss their opinions with each other. This increases the chance to uncover developing practices regarding ambiguous contract language or matters on which the contract is silent.

During Negotiations

During negotiations, a representative supervisor should evaluate management proposals and counterproposals as they are drafted, as to their effect on his supervisory abilities, and as to their acceptability to the union.

A representative supervisor should also evaluate the union proposals, and discuss with the board negotiating team:

- 1) the impact on the district if granted

- 2) counterproposals that might be acceptable to the supervisor

- 3) the priority placed upon a union demand by the leadership and by the rank and file

- 4) whether there is an underlying problem that could be resolved that would eliminate the need for the demand; for example, is only one teacher complaining, and can he be helped without adding language to the contract that affects the whole unit and goes far beyond the scope of the real problem?

All supervisors should be a resource regarding questions related to their operation and the performance and working conditions of employees under their supervision.

Negotiations as a Team Process

Which brings us to the final goal of supervisory involvement in negotiations: to foster identification with the administrative team in the district. Even if the supervisor never has an idea or insight about a problem that wouldn't also have been recognized eventually by a board member or superintendent, it is worthwhile to involve him in negotiations so that he knows he is perceived as managerial, and expected to perform and identify accordingly; the expectation that he identify with management completely, evidenced by his involvement in negotiations, will do more to foster a sincere identification with school district management and its goals and objectives, than any amount of lecturing, pleading or cajoling about how supervisors ought to perceive themselves as managers.

The involvement of supervisors in negotiations also shows the supervisor that the board intends to use negotiations to protect the authority of the administrative team. It proves that the board is sensitive to the needs of principals and supervisors, and recognizes that the labor agreement significantly affects their administrative freedom. Through such involvement, the supervisory staff will see the board fighting for their interests, and better understand the difficult trade-offs that occasionally have to be made in negotiations.

Employee Relations in the Context of a Labor Agreement

In 1968, the first public sector bargaining law was enacted (C.303). This statute changed the entire employment relationship between school boards, their administration and teaching staff. Before then, an informal, almost "familial," relationship existed. Boards retained almost complete control over wages and benefits; school administrators had a great deal of flexibility in employee relations.

The advent of collective bargaining forced many boards to negotiate with their employees, who were now organized into bargaining units, over terms and conditions of employment. These included items like: wages, hours, benefits, evaluation procedures, workload, and grievance procedures. Some school boards began to negotiate over "permissive" topics, like: class size, qualifications for promotion, and evaluation criteria.

Because of agreements reached between school boards and teacher unions, school administrators have had their hands tied when they have tried to transfer and promote teachers and take other management action. Even with the New Jersey Supreme Court's invalidation of the permissive category in *Ridgefield Park*, contract clauses on mandatorily negotiable matters have made administrative and managerial action cumbersome and sometimes impossible.

Collective bargaining has formalized the employment relationship; it has caused many school boards and administrators to view their staff as adversaries. Teachers are no longer looked at as individuals and professionals, but simply as employees and members of a group. While there is little doubt that collective bargaining and professionalism are at odds, one way of accommodating the two is through the development and implementation of a good personnel relations program. The goals of such a program would be to: treat employees as individuals, improve employee morale and job satisfaction, and promote good performance. In addition, it can be argued that good personnel relations can improve your district's labor relations program.

Social scientists have conducted hundreds of studies on methods to improve employee performance. Three major theories have evolved that should be mentioned.

1. **Job Enrichment** - This method of improving morale and/or performance assumes that by making job duties intrinsically rewarding, increased production or better performance will result. Job enrichment is accomplished by changing or rearranging job responsibilities and duties and may be accompanied by changes in the organizational structure.

2. **Positive Reinforcement** - This theory assumes that behavior is determined by its consequences, that "rewards" can be used to maintain good performance, and that promises of rewards can improve performance. The rewards involved may be economic or non-economic.

3. **Organizational Development** - This theory is based upon the premise that the work environment (organizational climate) and attitudes of fellow workers can enhance or be detrimental to employee morale and/or performance.

These three theories are not independent, and can be used together to improve job satisfaction and performance by fostering good employee relations. Application of these theories, through specific rewards and programs, should be considered as part of a good personnel program.

Attention must be paid to the needs of employees. Financial rewards are accomplished by the bargaining process. Through collective negotiations, employees are paid for experience, education, and in some rare cases, performance and productivity. Benefits are also established by negotiations; all employees in a given unit will receive the same benefits.

But there are non-financial rewards as well, that can be used to "compensate" employees as part of a personnel relations program - to pay attention to and satisfy the needs of employees. Non-financial rewards can be categorized into three groups: job rewards (related to the job enrichment discussed earlier), performance rewards (part of the positive reinforcement methodology), and membership rewards (associated with organizational development and climate).

Rewards from the job itself normally result from management action or supervision. These include: job restructuring, work flow changes, scheduling, job status and prestige.

Other rewards are associated with performance. The most obvious of these is the opportunity for advancement and promotion. Status may also be a performance reward, as well as responsibility, freedom and independence.

The third category of non-financial rewards is associated with membership in the organization; they are social rewards. These include the opportunity for friendship, acceptance by the work group, union activities, group prestige, and influence of the work group.

Most organizations, and school districts are no exception, ignore non-financial rewards. Or, if they recognize the existence of non-financial rewards, they use them improperly. To be effective, a school district's management must first recognize that non-financial rewards exist in the employment relationship. Second, the board must attempt to tie appropriate behavior modifications with certain kinds of rewards. An analysis should be completed regarding what kinds of job rewards, performance rewards and membership rewards exist in order to use them properly to attend to the needs of employees in order to improve job satisfaction and performance.

Job Rewards

Job rewards come from the organization and structure of the job, for the most part. Some of the problems that teachers may have with their jobs can be solved, in some part, by school boards. Obviously, some things cannot be done: changing the clientele (students), drastically altering work hours, and automation. But there are ways of improving the quality and desirability of a typical teaching position.

Teachers are well educated professional employees - use that professionalism. Just because you bargain over terms and conditions of employment does not mean that your interaction ends at the bargaining table. Consultation should be utilized more often and more effectively. The perfect solution to some of the boredom of teaching may be to broaden the teacher's responsibilities.

Committee assignments (staff-staff, staff-administrators, staff-board) could be utilized to improve employee morale and the quality of education. Most boards do utilize curriculum committees, textbook selection committees and others, but they may not be getting the most out of this tool. Personnel committees are essential when it comes to assessing recruitment needs, writing job descriptions, and discussing staffing.

But committees are useless if the recommendations developed by them are ignored. Proper direction of a committee and use of the committee's findings will insure that teachers know their professionalism is appreciated.

Some teachers may not be challenged by their responsibilities, some may be overwhelmed. Work flow analysis - class size and scheduling studies - can be used to improve some problems. The use of teacher aides where economically possible, could be considered. Changing from a classroom teaching period to a small conference or tutorial period might alleviate some problems. Or better arrangement of classes and distribution of groups of students might be studied. (A prep period might be more effective after third period than after first period).

Supervision is also part of organizational design and job enrichment. Is there too much supervision, or not enough? Are non-tenured staff members oversupervised and tenured teachers ignored? Good supervision, both as to quality and quantity, can be the basis of job rewards.

Good supervision cannot and should not be underestimated. The role of principals and supervisors in contract administration and as first line managers can be developed to improve an employee relations program. Grievances are sometimes more than an allegation that the contract has been violated. They are often attempts by employees to get their supervisors to listen to them. Many administrators are so busy that there is very little time left for individual problem-solving; therefore, a problem results when really a small complaint exists.

Principals and supervisors should be trained in human resource skills - in how to listen to employees' problems and how to help solve them. Sometimes listening is the solution. Principals and supervisors should also be "professional" about grievance handling; grievances should not be taken personally. Reacting emotionally is a poor management practice and it can intimidate employees.

Organizational procedures can also be developed that can improve teacher perception of their job and morale. One good method would be through the use of a board

handbook on personnel relations or personnel policies. While the Association probably gives all bargaining unit employees copies of the collective bargaining agreement, not all boards are as generous with a personnel handbook.

If more school districts had well-written and complete school board policy manuals, school boards would have fewer and less severe problems in negotiations with their employees, as well as in day-to-day personnel relations. A good policy manual provides for fair and consistent treatment of issues; this can help head off grievances. A policy manual helps keep administrators aware of what their authority is regarding issues, and a policy manual provides a needed orientation for teachers. Employee morale is assisted, in that all employees operate under known policies, rules and regulations. There is less chance of employee dissatisfaction if all of the employee rules are known to employees and their application is uniform and consistent.

A formal complaint procedure may be included in the handbook, indicating the channels of appeal for problems that are not properly grievances under the contract's definition.

Performance Rewards

Common performance rewards include the opportunity for advancement, personal status, recognition and praise, and ego awards. How do these fit in with the employee relations program in your district? School managers have the right to hire, to transfer, to assign and to promote. These rights should be utilized to motivate employees and reward good performance.

Policies favoring promotion from within are ones which improve morale by rewarding good performance. Knowing that there is opportunity for advancement can improve job performance. Transfers can be used to reward good performers as well. There are some courses, classes and classrooms which are more desirable than others.

Status and prestige are performance rewards that need not be accompanied by extra compensation (although they often are). Consulting and heeding the advice of a "master teacher" can be rewarding. Having a senior teacher chair an important committee on a critical issue can be beneficial to both the board and the employee.

The evaluation process is another method of recognizing performance. The setting of goals, which is part of tenured teaching staff evaluation, brings employees into the process. This kind of "management by objectives" turns evaluation into an ego fulfilling event, not an intimidating, one-sided process.

Praise and recognition are simple, and basic methods of rewarding employees for good performance that are oftentimes overlooked. Most people appreciate a pat on the back for a job well done, for giving a "little extra." This kind of positive reinforcement of good behavior is not time consuming, it is free, and requires little training.

Membership Rewards

A relatively easy method of improving employee relations in your district is through the use of membership rewards, benefits the employee receives from working in your district. These tend to be social in nature, and result from the interaction of teachers on a professional level, as union members, and as people.

Methods of improving and utilizing membership rewards are numerous. Overall, making the district a safe, clean, pleasant place to work is an important goal. Secure lockers, safe hallways, clean and well equipped teacher facilities are a fine place to begin. Although "teacher facilities" is a negotiable matter, it would not seem likely that teachers would turn down a separate dining room if it were offered!

Effective use of faculty meetings, teacher orientation and inservice days can improve the organizational climate of your district. Inviting the union leadership to speak at an orientation, or outside speakers to consult at an inservice day may improve a teacher's perception of the school district.

Besides teacher interaction with each other, the board can interact with staff through at least two methods: a district newsletter and a Personalized Benefit Statement. The district newsletter should not just be a discussion of new legislation in special education or cap problems. It should also spend time talking about personnel policies and people. Who received a sabbatical this year? Who earned a MA? Any new staff members or retirees?

A Personalized Benefit Statement (see example on next page) describes all of the economic benefits the teacher receives from being employed in your district. Very

few districts provide such a letter to employees, although it is a valuable tool in good personnel relations.

Summary

Recognizing that employees have needs other than money and financial security is the first step in developing an effective personnel relations program. All of us have a hierarchy of needs that must be fulfilled. Some of those needs can be found in the employment relationship.

Attention must be paid to these needs in order to improve employee relations. Listen to employees, consult with employees. Reward employees for good performance. Make their job interesting and challenging. Make your district a good place to work. Why? Because good employee relations complement your labor relations program. And because good employee relations can improve job satisfaction and performance.

Dear Average Teacher in Ideal School District:

Your salary for 1979-80 is \$12,973 for your performance and service on BA Step _____ as a _____ teacher. Along with your salary as a regular teacher, you receive _____ as a _____ (extra-curricular activities).

As a teacher in Ideal School District, you receive many benefits:

1. You currently receive 12 days sick leave for use while you are ill, each worth \$64.86 which is worth a total of \$778.32. In addition, you have _____ days accumulated sick leave.
2. You are eligible for 3 personal days providing application is made according to the contract and past practice. This benefit is worth \$194.58.
3. You and your family now receive full health care coverage with the State Health Benefits Plan (Blue Cross, Blue Shield, Rider J, Major Medical). This benefit is worth \$400 per year.
4. This year, a prescription drug plan was implemented for yourself and your family worth \$90 per year.
5. You are eligible for sabbatical leave since you have been in the district 7 years. Should you desire this benefit, please make application to the Superintendent.
6. You are currently enrolled in the Master's program at _____ College studying _____. Last year you received \$225 tuition reimbursement and \$45 reimbursement for books. You may take up to 6 credits this year with a maximum of \$400 tuition reimbursement.
7. At your current salary, if you were age 65 and chose to retire, your Social Security would be _____.
8. Should you become disabled, your disability would be _____.
9. Life insurance benefits for your family would be _____.
10. If you had _____ years of service and could retire this year, your pension would be _____.

These benefits are worth approximately \$_____, or _____% of your salary.

We appreciate the service you have given to the district and hope that you will continue to contribute to the successful education of children in Ideal School District.

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Decisions Affecting Negotiations

Listed below are a number of court and PERC decisions which affect negotiations:¹

Authority of a Board's Negotiating Team

Bergenfield Board of Education and Bergenfield Education Association, PERC No. 90, 1 NJPER 44.

East Brunswick Board of Education and East Brunswick Administrators' Association, PERC No. 77-6, 2 NJPER 279.

Good Faith Negotiations

State v. N.J. Council of State College Locals, 141 N.J. Super 470 (App. Div. 1976).

The obligation to negotiate in good faith does not include an obligation to make a concession on any given issue or to agree to the proposal of the other party.

Scope of Negotiations

Bethlehem Township Board of Education and Bethlehem Township Education Association, PERC No. 80-5, 5 NJPER 10159. *Tenured teacher evaluation procedures are negotiable as long as contracts do not conflict with State Board of Education rules. Related educational policy questions are non-negotiable.*

Cinnaminson Township Board of Education v. Cinnaminson Teachers' Association, N.J. Super ___, (App. Div., June 1, 1979). *The decision to RIF, the procedural details, and the incidental "impact" are non-negotiable.*

The Dunellen Trilogy

Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17 (1973). *Abolition of department chairmanship.*

Burlington County College Faculty Association v. Board of Trustees, 64 N.J. 10 (1973). *Negotiability of school calendar.*

Board of Education of Englewood v. Englewood Teachers Association, 64 N.J. 1 (1973). *Placement on salary guide.*

The Board of Education of the City of Englewood and Englewood Teachers Association, 150 N.J. Super 265 (App. Div., 1977). *The statutory power to reduce personnel cannot be the subject of negotiation or arbitration.*

Fair Lawn Education Association v. Fair Lawn Board of Education v. Teachers' Pension and Annuity Fund, Division of Pensions, Department of Treasury, State of New Jersey, 161 N.J. Super 67, affirmed, 79 N.J. 574 (1979). *Retirement incentive plans are illegal.*

Long Branch Education Association, Inc., v. Board of Education of the City of Long Branch, Monmouth County, 150 N.J. 262, affirmed O.D. 73 N.J. 461 (1977). *Assignment of teachers to lunchroom supervision is educational policy decision.*

Maywood Board of Education and Maywood Education Association, 168 N.J. Super 45, affirmed __N.J.__ (1979). *Impact bargaining on RIFs is illegal.*

¹ PERC or the courts can alter case law at any time. Before relying on these decisions, please check on whether they are currently good law. In addition, this is not an exhaustive list. For example, as of writing, there have been over 150 PERC scope of negotiations decisions. Only a few are listed here.

- Board of Education of the Township of North Bergen v. North Bergen Federation of Teachers**, 141 N.J. Super 97 (App. Div., 1976). *Criteria for promotions non-negotiable.*
- Board of Education of the Township of Piscataway v. Piscataway Maintenance and Custodial Association**, 152 N.J. Super 235 (App. Div., 1977); **Ramsey Teachers Association v. Board of Education of the Borough of Ramsey**, State Board of Education decision, January 10, 1979. *Extended sick leave contract clauses are illegal and unenforceable.*
- Piscataway Township Board of Education v. Piscataway Township Principals' Association**, 164 N.J. Super 98 (App. Div., 1978). *The decision to reduce the work year from 12 months to 10 months is a required topic of negotiations.*
- Ridgefield Park Education Association v. Ridgefield Park Board of Education**, 78 N.J. 144, (1978). *C.123 did not create a permissive category. Transfers are non-negotiable.*
- State of New Jersey v. State Supervisory Employees Association, State of New Jersey v. Local 195 IFPTE and Local 518 SEIU**, 78 N.J. 54, (1978). *General statutes giving authority to employers do not render negotiations over terms and conditions illegal. Specific statutes and regulations which govern terms and conditions of employment cannot be abrogated by contract.*
- Teaneck Board of Education and Teaneck Teachers Association**, 161 N.J. Super 75 (App. Div., 1978). *Criteria for evaluation and the content of evaluations cannot be negotiated.*

Scope of the Grievance Procedure

- Township of West Windsor v. Public Employment Relations Commission and P.B.A. Local 130**, 78 N.J. 98, (1978). *The terms of all negotiated grievance procedures must "cover" grievances concerning the interpretation, application or violation of policies, agreements and administrative decisions affecting terms and conditions of employment.*
- Board of Education of the Township of Bernards v. Bernards Township Education Association**, 79 N.J. 311 (1979). *Withholding an increment is not grievable to binding arbitration. Parties may negotiate advisory arbitration procedures to cover management prerogatives affecting individual employees.*

Employer Changes In Terms and Conditions

- Warren Hills Regional Board of Education and Warren Hills Regional Education Association**, PERC No. 78-69, 4 NJPER 4094. *Even though an educational policy decision to go to split sessions necessarily affects teachers' terms and conditions of employment, that fact does not change the right of the board to make that decision.*
- New Jersey Institute of Technology and Newark College of Engineering Professional Staff Association**, PERC No. 80-27, NJPER. *Where increases in workload are "inescapably intertwined with and inseparable from" an educational policy decision, negotiations over the increased workload are not required.*
- Rutgers, The State University and AFSCME, Council 52 and Local 1761**, PERC No. 80-26, NJPER. *Clear contract language can constitute a waiver by the union to its right to negotiate a unilateral change in working hours.*

Discrimination Due to Union Activity

- Brookdale Community College and George S. Abel**, PERC No. 78-80, 4 NJPER 4123. *College's denial of promotion was not justified by a substantial or legitimate business interest and was therefore due to union activity. Appeal pending.*
- Board of Education of the Borough of Haddonfield and Haddonfield Supportive Staff Association**, PERC No. 77-36, 3 NJPER 71. *Defines PERC's test for finding a violation of Section 5.4(a)(5) of the PERC Law.*

- Laurel Springs Board of Education and Mary Becker, PERC No. 78-4, 3 NJPER 228. Describes "totality of conduct" test for finding violations of 5.4(a)(3) and (a)(1).
- Manalapan-Englishtown Regional Board of Education and Edward A. Barrett, Superintendent, and Manalapan-Englishtown Educational Association, PERC No. 78-91, 4 NJPER 4134. Board did not commit 5.4(a)(3) and (1) violations when it disciplined union president for disobeying order not to use students to send union position statements to parents.
- North Warren Regional Board of Education and North Warren Education Association, PERC No. 79-9, 4 NJPER 4187. Employers retain the right to discharge, discipline or refuse to promote employees for reasons unrelated to union activities. The burden is on the union to prove a violation.
- State of New Jersey and Council of New Jersey State College Locals NJSFT-AFT/AFL-CIO, PERC No. 78-55, 4 NJPER 4072. Commission finds that, while lower levels of the renewal/tenure process at Ramapo College may have been tainted with anti-union animus, the final decision not to renew and grant tenure was not.

Department Chairmen as Supervisors

- River Dell Board of Education and River Dell Education Association, PERC No. 78-85, 4 NJPER 4128. Department Chairmen are excluded from a bargaining unit with teachers due to "conflict of interest" occurring from teachers' strike.

Maternity Leave, Childcare and Sick Leave Benefits

- Board of Education of Cinnaminson v. Silver, 1976 S.L.D. 738. Temporary disability due to normal pregnancy and use of accumulated sick leave.
- Gilchrist v. Board of Education of Haddonfield, 155 N.J. Super 358 (App. Div., 1976). Nonrenewal of non-tenured pregnant teacher based on board policy minimizing classroom instruction interruptions not discriminatory.
- Castellano v. Linden Board of Education, 79 N.J. 407 (1979). Use of accumulated sick leave for pregnancy-related disability and mandatory leave policy for pregnant teachers.

NJSBA Analysis of the NJEA Sample Agreement for 1980-81

This past year school labor relations has been dominated by two changes in the legal framework for negotiations: the Supreme Court decisions of August 1978, and the adoption of rules for tenured teacher evaluation by the State Board of Education. The revised NJEA Sample Agreement, and our analysis of this document, reflect these changes.

The Sample Agreement has changed more in format than content. Certain clauses, formerly independent contract articles, are now parts of other articles; some articles are changed in title only. Because of these changes, the numbering system does not correspond to that of prior years, so readers attempting comparisons will have to hunt a bit.

As always, you should analyze contract demands in terms of their meaning and effect when applied to your own district.

On the left of each page appears the text of the NJEA Sample Agreement. On the right of each page appears our commentary. A note of recognition is due Bruce Taylor, former NJSBA Director of Labor Relations, who authored much of the commentary still used today in our analysis of the Sample Agreement. References in the book to PERC refer to the revised edition of What Every School Board Member Should Know About the PERC Law, copyright 1979 by the New Jersey School Boards Association.

PREAMBLE

This Agreement entered into this _____ day of _____, 19____, by and between the Board of Education of _____, the City of _____, New Jersey, hereinafter called the "Board," and Association, hereinafter called the "Association."

WITNESSETH:

WHEREAS, the Board and the Association recognize and declare that providing a quality education for the students of the _____ School District is their primary aim and that the character of such education depends predominately upon the quality of teaching, the availability of materials, the functional utility of facilities, the release of imagination in planning, the application of democratic processes in administration, and the maintenance of high morale among the teaching faculty, and

WHEREAS, the members of the teaching profession are particularly qualified to advise the formulation of policies and programs designed to improve educational standards, and

WHEREAS, the Board has an obligation, pursuant to Chapter 303, Public Laws 1968 to negotiate with the Association as the representative of employees hereinafter designated with respect to the terms and conditions of employment, and

WHEREAS, the parties have reached certain understandings which they desire to confirm in this Agreement, be it

RESOLVED, in consideration of the following mutual covenants, it is hereby agreed as follows:

Article I, Recognition

A. Unit

The Board hereby recognizes the Association as the exclusive and sole representative for collective negotiation concerning grievances and terms and conditions of employment for all personnel whether under contract, on leave, on a per diem basis, employed or to be employed by the Board, but excluding:

(Insert positions excluded from the negotiating unit.)

This section notes the date the contract was entered and is standard and acceptable.

The primary purposes of a labor agreement are: (1) to state the terms and conditions of employment of employees; (2) to place limitations on the ability of the employer to change those terms and conditions; and (3) to specify certain kinds of duties or requirements of employees. If a clause in the contract does not fulfill one or more of these purposes, it is extraneous.

The first two whereas clauses are illegal topics of negotiation. Fairview Board of Education, PERC No. 80-18.

The clauses in this section are extraneous. It is better deleted inasmuch as it may be used by an arbitrator or other third party to modify the meaning of the Agreement. The General Counsel of the NEA states: "From a strict legal point of view they are not necessary. They may, however, be viewed by an arbitrator or a court as providing a clue to the intention of the parties in construing ambiguous provisions in the agreement. If such statements are to be included, therefore, the language should be carefully drafted." (See The Law and Practice of Teacher Negotiations, 3:16, cited in Bibliography, earlier.)

This is standard language.

The definition of the bargaining unit is very important. The board has the same right as the union to insist upon the proper negotiation unit. The unit should be limited to classifications of employees which have what is called a "community of interest." In a teachers' unit, this would include all certificated teaching personnel under contract. The unit may also include nurses, psychologists, social workers. The unit will differ from district to district.

Under Chapter 123, the superintendent and assistant superintendent must be excluded from all bargaining units. In addition, new supervisory bargaining units may not be represented by unions which admit non-

B. Definition of Teacher

Unless otherwise indicated, the term "teachers," when used hereinafter in this Agreement, shall refer to all professional employees represented by the Association in the negotiating unit as above defined, and references to male teachers shall include female teachers.

Article II, Negotiation of Successor Agreement

A. Deadline Date

The parties agree to enter into collective negotiation over a successor Agreement in accordance with Chapter 123, Public Laws 1975 in a good-faith effort to reach agreement on all matters concerning the terms and conditions of teachers' employment. Such negotiations shall begin not later than August 1 of the calendar year preceding the calendar year in which this Agreement expires. Any agreement so negotiated shall apply to all teachers, be reduced to writing, be signed by the Board and the Association, and be adopted by the Board.

supervisors to membership (such as the NJEA). Confidential employees also are excluded from bargaining units under Chapter 123. Should the board have any questions concerning the propriety or appropriateness of the bargaining unit as constituted, it may file with P.E.R.C. a petition for clarification of unit. (For a full discussion of bargaining units see PERC, Chapter Two, "Representation.")

P.E.R.C.'s Director of Representation has ruled that substitute teachers who meet certain strict criteria have the right to negotiate under Chapter 123. Bridgewater-Raritan Board of Education, P.E.R. No. 79-12.

With the passage of time there might arise some difficulty when new titles are created in the district. There are several ways which can be used to resolve these unit problems. If you encounter difficulty, call your professional negotiator, board attorney or Field Service Representative for a full discussion of such matters as unit clarification, supervisory exclusion or unit consolidation.

Paragraph B means that every right granted a classroom teacher applies equally to all professionals who are not classroom teachers. Under special circumstances, the board may wish to reserve certain rights and privileges only to classroom teachers, such as preparation periods or tuition reimbursement. Whether or not you have such a definition, be careful to specify whether a contract clause applies to all employees.

Under the Rules and Regulations of P.E.R.C., there is now a beginning date for negotiations on successor agreements. This year it is about December 1. If the parties agree to begin at a later date they may do so.

The Sample Agreement would begin bargaining on or before August 1st. In effect, boards would be bargaining over a successor to a contract which has not even taken effect. While timing of negotiations is within the power of the parties subject only to P.E.R.C.'s rules, this last point should be kept in mind. Regarding the last sentence: you should always notify the union prior to negotiations that the full board of education retains the right to ratify or reject any agreements reached during negotiations.

B. Grants from Federal or State Agencies

The Board agrees that the procedure set forth in this ARTICLE shall be applicable to the determination and implementation of the grants to be requested by the Board pursuant to any federal and/or state laws, provided; however, that the relevant time-table shall be shortened if necessary to comply with time requirements in making or processing applications under the relevant federal or state laws.

C. Increase in State Aid

The Board agrees to reopen negotiations and permit amendments to any section of this Agreement whenever state and/or federal funds in addition to and/or in excess of those amounts previously anticipated for the fiscal year(s) covered by this Agreement have been appropriated. The Board shall so inform the Association within five (5) days of its notification of the amounts to be received in such subsequent state and/or federal appropriation.

D. Modification

This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing duly executed by both parties.

Article III, Grievance Procedure

A. Definitions

1. Grievance

A "grievance" is a claim by a teacher or the Association based upon the interpretation, application, or violation of this Agreement, policies or administrative decisions and practices affecting a teacher or a group of teachers.

Boards should not agree to a clause like this last sentence.

Boards should reject B. and C. These call for automatic reopening of a contract in certain circumstances. When the contract is reached, it is preferable that it resolve all issues for its entire term. No mention is made, it is noted, of reopening negotiations in the event of a decrease in State or Federal aid.

Section D. is a standard clause and should be retained in the agreement.

The grievance procedure may be the most important section of any contract. Ideally, a grievance procedure will define a grievance, identify who may file a grievance, set a time limit on the filing of a grievance and detail individual steps through which a grievance must pass. Grievance procedures can provide a positive means for resolution of disputes.

Definition: The Supreme Court's West Windsor case is discussed at length in an article earlier in this book, entitled, **Employee Grievances**. Please refer to it and direct inquiries to your board attorney, professional negotiator or to the Labor Relations Department of the NJSBA.

It is strongly recommended that the board seek two procedures in the agreement or carefully detail grievances that begin and end at different levels. This approach is consistent with the West Windsor decision.

Boards which have agreed to an arbitration clause should only agree to submit grievances to binding arbitration which arise under the express terms of the agreement. Grievances over "board policies and administrative decisions and practices" should not fall under an arbitration clause.

Boards should avoid agreeing to a grievance definition that includes "practices" as grievable, because the word is too ambiguous: consistent practices, known practices, building practices, grade practices, random practices or individual supervisor practices? Excluding the words "and prac-

2. Aggrieved person

An "aggrieved person" is the person or persons or the Association making the claim.

3. Party in interest

A "party in interest" is the person or persons making the claim and any person including the Association or the Board, who might be required to take action or against whom action might be taken in order to resolve the claim.

B. Purpose

The purpose of this procedure is to secure, at the lowest possible level, equitable solutions to the problems which may from time to time arise affecting teachers. Both parties agree that these proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure.

C. Procedure

1. Time limits

The number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process. The time limits specified may, however, be extended by mutual agreement.

2. Year end grievances

In the event a grievance is filed at such time that it cannot be processed through all the steps in this grievance procedure by the end of the school year, and, if left unresolved until the beginning of the following school year, could result in irreparable harm to a

tices," grievances can be defined as listed in this Sample Agreement paragraph. However, only grievances over alleged violations or misinterpretation of the contract should proceed through all grievance steps including binding arbitration. Grievances concerning "policies" should start and end with the board. Grievances concerning "administrative decisions" might start with the administrator responsible for the decision and end with the board. See Negotiating Effective Grievance Procedures, earlier.

These different initiation and terminal steps in this "multi-track" grievance procedure would meet your obligations under West Windsor and limit grievance review to the logical levels.

The Court strongly endorsed this multi-track approach in its decision.

Who May File a Grievance: The Supreme Court decided on August 3, 1978, that the majority representative union has the constitutional and statutory right to present grievances on behalf of employees, and that this right cannot be waived through contrary contractual language. The case, involving the Red Bank Regional Board of Education, thus prohibits the negotiation of a clause to restrict the filing of grievances to individual employees. The Court decision assumed that individuals have a concurrent right to present grievances themselves; it did not address whether a union can file a grievance against the wishes of the affected employee.

The purpose of the grievance procedure is not necessarily to achieve "equitable" solutions, but to resolve differences concerning the contract. The sample language grants unlimited discretion to an arbitrator to fashion an "equitable" solution according to his or her personal definition of justice.

Time Limit: The sample agreement places rigid time limits on the board's administrative personnel but places no time limit on the grievant. It is in the interest of the parties that a time limitation be placed in the contract. If you find that you do not have enough time at any step to adequately consider a grievance, propose different

party in interest the time limits set forth herein shall be reduced so that the grievance procedure may be exhausted prior to the end of the school year or as soon thereafter as is practicable.

3. Level one — principal or immediate superior

A teacher with a grievance shall first discuss it with his principal or immediate superior, either directly or through the Association's designated representative, with the objective of resolving the matter informally.

4. Level two — superintendent

If the aggrieved person is not satisfied with the disposition of his grievance at Level One, or if no decision has been rendered within five (5) school days after the presentation of the grievance, he may file the grievance in writing with the Association within five (5) school days after the decision at Level One or ten (10) school days after the grievance was presented, whichever is sooner. Within five (5) school days after receiving the written grievance, the Association shall refer it to the superintendent of schools.

5. Level three - arbitration

(a) If the aggrieved person is not satisfied with the disposition of his grievance at Level Two, or if no decision has been rendered within ten (10) school days after the grievance was delivered to the superintendent, he may, within five (5) school days after a decision by the superintendent or fifteen (15) school days after the grievance was delivered to the superintendent, whichever is sooner, request in writing that the Association submit its grievance to arbitration. If the Association determines that the grievance is meritorious, it may submit the grievance to arbitration within fifteen (15) school days after receipt of a request by the aggrieved person.

(b) Within ten (10) school days after such written notice of submission to arbitration, the Board and the Association shall attempt to agree upon a mutually acceptable arbitrator and shall obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the specified period, a request for a list of arbitrators may be made to the American Arbitration Association by either party. The parties shall then be bound by the rules and procedures of the American Arbitration Association.

(c) The arbitrator's decision shall be in writing and shall be submitted to the Board and the Association and shall be final and binding on the parties.

time limitations. The contracts in the private sector often place a 3 day limit on the initial filing of grievances. While this may seem unduly restrictive, two to three weeks would not seem so.

Boards have had great success in adding realistic time limits on grievance initiation.

The phrase "should be considered" is unnecessary and should be replaced by the word "is".

In the sample agreement, there is no time limit on the filing of a grievance. That time limit should appear prior to or in the first step of the procedure.

The sample agreement's procedure begins with the principal or immediate superior and goes on to the superintendent. Those boards which have department chairmen who report to principals or unit leaders may desire to guarantee that both supervisory levels be part of the procedure.

School boards are, almost without exception in New Jersey, included as a step in the grievance procedure.

Boards should note with interest that there is no place in the NJEA sample agreement for the board of education. As the legally constituted body responsible for education, this omission is inexcusable. The grievance steps should reflect the actual chain of supervision in your school district. The board's role in the procedure would normally follow the chief school administrator's.

Boards differ on whether they desire to have themselves, advisory or binding arbitration as the last step of the grievance procedure. No board is required to agree to binding arbitration. Prior to doing so you should be sure that you can operate the school system adequately with the definition of a grievance and the contract clauses to which you have agreed. Binding arbitration can prove harmful especially where you have agreed to a "savings clause," a "past practice clause," or general goal statements. Remember, no matter how responsible you believe the union to be, expect the organization to seek the most favorable (in their eyes) interpretation of a given clause. Can you now live with that interpretation? The amount of no or yes answers you

(d) In the event that arbitrability of a grievance is at issue between the parties, jurisdiction to resolve the issue shall rest solely with the arbitrator selected in accordance with the provisions of Section C.5 (b) of this Article.

(e) The costs for the services of the arbitrator, including per diem expenses, if any, and actual and necessary travel, subsistence expenses and the cost of the hearing room shall be borne equally by the Board and the Association. Any other expenses incurred shall be paid by the party incurring same.

give to this question may help you determine whether you desire to agree to binding arbitration.

If the union is intent on gaining binding grievance arbitration, they should be willing to remove any "past practice" clause. In addition, the board should insist on a "no strike or work stoppage clause."

If you have agreed to binding arbitration, it is now critical because of the West Windsor decision to limit such arbitration to the "express terms of the written Agreement." Whether or not you have done that earlier in your procedure, you should do it here also. Consider the clause in italics in the article, Negotiating Effective Grievance Procedures, earlier. This is certainly one issue on which hard bargaining may be required to protect the very functions of public management of education.

The following language should also be contained in any arbitration clause to limit the arbitrator to his or her proper role: *"The arbitrator shall be limited to the issues submitted and shall consider nothing else. The arbitrator can add nothing to nor subtract anything from the Agreement between the parties."*

Although not needed in the contract, you should be aware of the "self-help" rule. Most arbitrators will hold that an employee must carry out any directive (unless it threatens his or her health or safety) and cannot refuse to do so on the grounds that the directive violated the contract. Employees who violate this procedure (also commonly referred to as the "work, then grieve" rule) can ultimately win on whether the directive was in violation of the contract but lose on the issue of the employer's discipline of the employee for insubordination.

Boards should not agree to 5.d. This clause is designed to remove P.E.R.C. and the Courts from making decisions on what is negotiable and is not in the best interest of the board. 5.e. is standard.

In Ridgefield Park, the Court set forth a specific procedure for the review of arbitrability of a particular dispute. That procedure should be followed by boards.

D. Rights of Teachers to Representation

1. Teacher and association

Any aggrieved person may be represented at all stages of the grievance procedure by himself, or at his option by representative(s) selected or approved by the Association. When a teacher is not represented by the Association, the Association shall have the right to be present and to state its views at all stages of the grievance procedure.

2. Reprisals

No reprisals of any kind shall be taken by the Board or by any member of the administration against any party in interest, any representative, any member of the Association, or any other participant in the grievance procedure by reason of such participation.

E. Miscellaneous

1. Group grievance

If, in the judgment of the Association, a grievance affects a group or class of teachers, the Association may submit such grievance in writing to the superintendent directly and the processing of such grievance shall be commenced at Level Two. The Association may process such a grievance through all levels of the grievance procedure even though the aggrieved person does not wish to do so.

2. Written decisions

Decisions rendered at Level One which are unsatisfactory to the aggrieved person and all decisions rendered at Levels Two and Three of the grievance procedure shall be in writing setting forth the decision and the reasons therefore and shall be transmitted promptly to all parties in interest and to the Association. Decisions rendered at Level Three shall be in accordance with the procedures set forth in Section C, paragraph 5 (c) of this ARTICLE.

3. Separate grievance file

All documents, communications and records dealing with the processing of a grievance shall be filed in a separate grievance file and shall not be kept in the personnel file of any of the participants.

4. Forms

Forms for filing grievances, serving notices, taking appeals, making reports and recommendations, and other necessary documents shall be prepared jointly by the superintendent and the Association and given appropriate distribution so as to facilitate operation of the grievance procedure.

5. Meetings and hearings

All meetings and hearings under this procedure shall not be conducted in public and shall include only such parties in interest and their designated or selected representatives, heretofore referred to in this ARTICLE.

Article IV, Teacher Rights

A. Rights and Protection in Representation

Pursuant to Chapter 123, Public Laws 1975, the Board hereby agrees that every employee of the Board shall have the right freely to organize, join and support the Association and its affiliates for the purpose of engaging in collective negotiations and other concerted activities for mutual aid and protection. As a duly selected body exercising governmental power under the laws of the State of New Jersey, the Board undertakes and agrees that it shall not directly or indirectly discourage or deprive or coerce any teacher in the enjoyment of any rights conferred by Chapter 123, Public Laws 1975 or other laws of New Jersey or the Constitutions of New Jersey and the United States; that it shall not discriminate against any teacher with respect to hours, wages, or any terms or conditions of employment by reason of his membership in the Association and its affiliates, his participation in any activities of the Association and its affiliates, collective negotiations with the Board, or his

D.2. is a paraphrase of law. These protections are guaranteed by the law and need not be included in the contract.

E.1. Note that the grievance would begin with the superintendent rather than the principal or immediate superior.

E.2. You retain the flexibility to agree on various approaches to your procedure. Some boards have highly formalized procedures, with written answers on prepared forms. Others find an informal approach more useful. Use what works for you.

The joint agreement on forms for filing grievances is a standard procedure. However, there need be no agreement to jointly construct forms for the balance of items listed in E.4. Of course, E.4.'s last few phrases might require a board to distribute grievance forms on a regular basis, a thoroughly ridiculous act.

Last year's Negotiations 79 contained a "Sample Grievance Form" which should streamline grievance record-keeping and clarify issues in dispute.

E.5 is a standard clause.

This is an example of an unnecessary commitment to a paraphrase of the law. An interesting provision here is that only those teachers desiring to support or join the NJEA affiliate are protected. Those teachers who want to belong to another or no labor organization have no similar contract right. Another phrase that you should avoid begins on the fourth line: "*and other concerted activities for mutual aid and protection.*" This is not defined and may be used by the union to protect employees engaged

institution of any grievance, complaint or proceeding under this Agreement or otherwise with respect to any terms or conditions of employment.

B. Statutory Savings Clause

Nothing contained herein shall be construed to deny or restrict to any teacher such rights as he may have under New Jersey School Laws or other applicable laws and regulations. The rights granted to teachers hereunder shall be deemed to be in addition to those provided elsewhere.

C. Just Cause Provision

No teacher shall be discharged, disciplined, reprimanded, reduced in rank or compensation, or deprived of any professional advantage, or given an adverse evaluation of his professional services without just cause. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth.

in illegal work stoppages such as strikes.

Title 34:13A-5.3 states: "Except as hereinafter provided, public employees shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from such activity."

Despite the West Windsor decision discussed in the earlier article entitled, *Employee Grievances*, boards should refrain from placing statutory provisions in labor agreements. If, for some reason, references are made to existing statutes, they should be specific references, not paraphrases of law such as contained in A. Furthermore, boards should think seriously before agreeing to allow arbitrators to make determinations of the meaning of statutes. The arbitration clause can be as narrow as the parties make it. You can exclude disputes over statutory terms and conditions of employment from arbitration.

The second sentence is a "past practice" clause. The goal of this sentence is to freeze all existing "benefits." If this sentence is present anywhere in your contract your administrative personnel may never be sure of whether a certain practice is a teacher "benefit." Boards should never agree to a contract clause the meaning of which is unclear. The union should be asked which "benefits" it seeks to guarantee by this sentence. That question may result in a withdrawal of the demand. On the other hand, their answer may make you think twice about agreeing to this sentence.

The difficulty with Section C is two-fold: parts of it are virtually impossible to define; other parts concern clearly illegal topics for negotiations. For example, the decision to discharge a teacher, for poor performance or in a reduction in force, is non-negotiable and non-arbitrable. The decision to withhold the increment cannot be grieved to binding arbitration. "Professional advantages," if it refers to a place of assignment or the availability of teacher aides, is an illegal topic of bargaining. Transfers, even if for disciplinary purposes, are not arbitrable.

It may be that such a "just cause"

D. Required Meetings or Hearings

Whenever any teacher is required to appear before any administrator or supervisor, Board or any committee, member, representative or agent thereof concerning any matter which could adversely affect the continuation of that teacher in his office, position or employment or the salary or any increments pertaining thereto, then he shall be given prior written notice of the reasons for such meeting or interview and shall be entitled to have representative(s) of the Association present to advise him and represent him during such meeting or interview. Any suspension of a teacher pending charges shall be with pay.

E. Evaluation of Students

The teacher shall maintain the exclusive right and responsibility to determine grades and other evaluations of students within the grading policies of the School District based upon his professional judgment of available criteria pertinent to any given subject area or activity to which he is responsible. No grade or evaluation shall be changed without approval of the teacher.

F. Criticism of Teachers

Any question or criticism by a supervisor, administrator, or board member of a teacher and his instructional methodology shall be made in confidence and not in the presence of students, parents, or other public gatherings.

G. Association Identification

No teacher shall be prevented from wearing pins or other identification of membership in the Association or its affiliates.

clause is applicable only to letters of reprimand.

Because of the complexity of the "just cause" topic, please seek guidance prior to even discussing this issue in negotiations. It is usually better to agree to a number of specific and understandable clauses than to a single clause with as much uncertainty as this one.

An employee has a statutory right to representation in an investigatory meeting which he reasonably believes could result in discipline. North Warren Regional Board of Education, PERC No. 79-9. Much of this clause is therefore unnecessary. But note that this does not apply to evaluation conferences, which are matters of educational policy. Before agreeing to any clause such as this, boards should insist on knowing exactly what meetings the union has in mind.

The last sentence requires that suspensions be with pay. Suspension of teaching personnel should be without pay because of the difficulty in obtaining reimbursement of monies paid to employees who subsequently lose appeals before the Commissioner.

The Ridgefield Park decision renders this an illegal subject. But even prior to that decision, it seemed clear that the clause was a violation of law. In a decision by the Acting Commissioner of Education in July, 1977, the following appeared:

It is essential that local boards must retain such authority of review to prevent assignment of unreasonable or arbitrary grades. The acts of teachers may neither be insulated from administrative review of their supervisors and administrators nor from quasi-judicial review by the Commissioner or judicial review by the courts. Talarsky v. Edison Township Board of Education, 1977 S.L.D. 862.

This section, if enforced in every case, probably would run counter to the Sunshine Law. Court decisions have determined that it is the individual employee who can select or reject public discussion of a personnel mat-

Article V, Association Rights and Privileges

A. Information

The Board agrees to furnish to the Association in response to reasonable requests from time to time all available information concerning the educational program and the financial resources of the district, including but not limited to: class size, number of specialists, annual financial reports and audits, register of certificated personnel, tentative budgetary requirements and allocations, agendas and minutes of all Board meetings, census data, individual and group teacher health insurance premiums and experience figures, names and addresses of all teachers, and such other information that shall assist the Association in developing intelligent, accurate, informed and constructive programs on behalf of the teachers and their students, together with information which may be necessary for the Association to process any grievance or complaint.

B. Released Time for Meetings

Whenever any representative of the Association or any teacher participates during working hours in negotiations, grievance proceedings, conferences, or meetings, he shall suffer no loss in pay.

C. Use of School Buildings

The Association and its representatives shall have the right to use school buildings at all reasonable hours for meetings. The principal of the building in question shall be notified in advance of the time and place of all such meetings. No approval shall be required.

D. Use of School Equipment

The Association shall have the right to use school facilities and equipment, including typewriters, mimeographing machines, other duplicating equipment, calculating machines, and all types of audio-visual equipment at reasonable times, when such equipment is not otherwise in use. The Association shall pay for the reasonable cost of all materials and supplies incident to such use, and for any repairs necessitated as a result thereof.

ter. The union cannot waive individual rights. If a non-tenured teacher, for example, desires an informal conference on his or her non-renewal to be held in public, the intent of this clause would have to be violated by the board as it complies with the Open Meetings Act.

A. goes well beyond the legal requirements to provide information. First, the union's right to certain information will rest on an interpretation of Chapter 123. Therefore, there is no need for this clause in the contract. Second, the sample language guarantees that the board will supply data that has little or no relevance to collective negotiations. Particularly disturbing is the reference to "tentative budgetary requirements and allocations," whatever that means.

Unions generally have a right to information possessed by the employer which is reasonably needed to carry out the union's duty to negotiate on behalf of its members or to fairly process grievances. If you are presented with a demand which you believe goes beyond these standards, consult your board attorney or professional negotiator.

The reference in the latter part of this clause to "developing intelligent, accurate, informed and constructive programs on behalf of the teachers and their students" is inappropriate in a labor contract and is probably an illegal topic of negotiations.

The balance of Article V grants certain rights to the union. You are under no legal obligation to grant any of these rights.

B. could be agreed to if the "no loss of pay" provision covered employees mutually scheduled to participate in union activities.

C. in its "no approval" section could substantially interfere with the educational and/or extracurricular program in the district. It would be wiser to retain prior approval.

D. requires no advanced approval. Is this wise? Is there a difference between the word "reasonable" and the actual cost?

E. Bulletin Boards

The Association shall have, in each school building, the exclusive use of a bulletin board in each faculty lounge and teachers' dining room. The Association shall also be assigned adequate space on the bulletin board in the central office for Association notices. The location of the Association bulletin boards in each room shall be designated by the Association. Copies of all materials to be posted on such bulletin boards shall be given to the building principal, but no approval shall be required.

F. Mail Facilities and Mail Boxes

The Association shall have the right to use the inter-school mail facilities and school mail boxes as it deems necessary and without the approval of building principals or other members of the administration.

G. Office Space

The Association shall be provided without cost to it, with adequate office space in a building at a location and of a description to be mutually agreed upon. The Association shall be allowed to install a telephone in such office at its own expense.

H. Leave for Association President

The Board shall grant up to full leave with pay to the president of the Association during his term in office according to a schedule submitted by the president prior to the beginning of each school year.

I. Released Time for Faculty Representative

The Board shall provide up to () hours per week of released time to a faculty representative designated by the Association in each building to perform his functions as Association representative in the enforcement of this Agreement. Said time shall be in addition to regularly scheduled preparation time and lunch period as provided in this Agreement.

J. Orientation Programs

All orientation programs for new teachers shall be co-sponsored by the Board and the Association with the Association obligated to assume only such costs as may be mutually agreed upon during the planning of such programs. To the extent prohibited by law, the Board shall not be expected to assume the cost of purely social events conducted as part of such orientation programs, nor shall the Association be expected to assume the cost of speakers, consultants, and services normally considered an appropriate professional in-service training activity of a board of education. Duties and responsibilities of teachers involving student supervision outside of regular class work shall be clearly explained as part of the regular orientation program.

K. Sub Contracting

The Board shall enter into no contract which will result in instruction being provided, supervised, or otherwise influenced by any person or persons, organization, group or company other than properly certificated persons directly employed by the Board or by the Association without the express written approval of the Association.

L. Exclusive Rights

The rights and privileges of the Association and its representatives as set forth in this Agreement shall be granted only to the Association as the exclusive representative of the teachers, and to no other organizations.

Article VI. Teacher Work Year

A. In-School Work Year

1. Ten (10) month personnel

The in-school work year for teachers employed on a ten month basis (other than new personnel who may be required to attend an additional () days of orientation) shall not exceed () days. The first day of the in-school work day shall

G., H. Most districts will find it impossible to comply with these demands.

I. In larger districts, leave is granted in limited amounts. Your circumstance should dictate whether a similar clause is acceptable.

J. makes the union an equal partner with the board and its administration in orientation programs. This clause may violate that provision of Chapter 123 which prohibits an employer from "assisting" a labor organization.

PERC has held subcontracting to be a required subject for negotiations. Boards, however, should not agree to a clause prohibiting subcontracting, because the need may arise for it (e.g. where employees are not interested in certain vacant positions). Regarding supervisors, on the other hand, the teachers' union has no authority to negotiate over who will supervise teachers; to this extent the clause is illegal.

The second sentence of A.1. attempts to establish the beginning and ending dates of the academic calendar. C.1. attempts to establish through negotiations the vacation breaks within the academic calendar.

commence no earlier than September , 19 , and the last day shall be no later than June , 19 .

2. Twelve (12) month personnel

a. The in-school work year of teachers employed on a twelve (12) month basis shall not exceed () days.

b. Teachers on a twelve (12) month basis shall be entitled to () vacation days, which shall occur between July 1 and August 31.

3. Definition of in-school work year

The in-school work year shall include days when pupils are in attendance, orientation days, and any other days on which teacher attendance is required.

4. Inclement weather

Teacher attendance shall not be required whenever student attendance is not required due to inclement weather.

B. Holidays

Teachers shall be entitled to the following holidays: (* denotes legal holiday)

- | | |
|-------------------------|------------------------|
| *Labor Day | *Washington's Birthday |
| Rosh Hashanah | *Good Friday |
| *Columbus Day | *Memorial Day |
| Yom Kippur | *Independence Day |
| *Election Day | *Christmas Day |
| *Veterans' Day | *New Years Day |
| *Martin Luther King Day | *Thanksgiving Day |
| *Lincoln's Birthday | |

C. Vacation Periods

1. Teachers shall be entitled to the following vacation periods each year of the contract:

- November _____ - November _____
December _____ - January _____
April _____ - April _____
Other _____ - _____

2. The work day prior to a vacation period shall be a half day (not to exceed four (4) hours).

D. Voluntary Work

The Board and/or the Administration may request voluntary work. However, any voluntary work performed on or during a holiday or vacation period shall be compensated at double the daily rate as determined by a 180-day work year. A teacher shall have the right to refuse to perform volunteer work during a holiday or vacation period.

Article VII, Work Hours and Work Load

A. Work Day

1. Teachers shall not be required to "clock in or clock out" by hours and minutes. Teachers shall indicate their presence for duty by placing a check mark in the appropriate column of the faculty "sign-in" roster.

The Burlington County College Supreme Court decision and recent PERC decisions hold that, while the actual number of days to be worked in a year is negotiable, the placement of those days is not. PERC has stated, however, that a board is obligated to negotiate the impact of changes in the school calendar upon terms and conditions of employment (see **Balancing Management Rights and the PERC Law**, earlier).

Most boards have found that local unions have little desire to negotiate the calendar itself. Consultation with teachers is usually all that is needed.

A.3. could pose problems to the board. Any agreement concerning the number of work days must be carefully thought out. For example, agreement to a 180 day work year would, under A.3., preclude any required teacher attendance on orientation and planning days.

Teachers have a statutory right to leave with pay on legal holidays. Most districts do not close school on these days, however, in order to provide Christmas and spring vacation periods and an early June dismissal; the great majority of teachers cooperate by attending school on these days when so scheduled.

A.1. Boards may desire more proof of presence than a check mark on a roster.

2. The arrival and departure times for all teachers shall be designated in Schedule C; however, their total in-school work day shall consist of not more than () hours and () minutes which shall include a duty-free lunch period as guaranteed to teachers under Section C of this ARTICLE.

3. Except as clarified in paragraph 4 below, no teacher shall be required to report for duty earlier than () minutes before the opening of the pupil's school day, and shall be permitted to leave () minutes after the close of the pupil's school day, except as otherwise designated in Schedule C. On Fridays or on days preceding holidays, the teachers' day shall end at the close of the pupils' day.

4. Any teacher who is required to work beyond the regular teacher in-school work year as defined in ARTICLE VI, Section A.1, or beyond his/her total in-school work day as defined in paragraphs 2 and 3 above, shall be compensated at the rate prescribed in ARTICLE VI, Section F.

B. Workload

1. Junior and Senior High School

a. The daily workload in the junior and senior high school shall be () students per day which shall be equitably distributed through () teaching periods per day and shall not exceed () hours per day.

A.2. While the length of the school day is a required subject of negotiations, you must be very careful to avoid limiting district operation. Districts which negotiate total hours of the work day and not the actual times employee attendance is required have substantially more flexibility to meet changing conditions.

A.3. In order to protect flexibility in assignment, it would be wise for a board to avoid specifying the actual arrival and dismissal time for teaching personnel.

A.4. Should be refused on the grounds that, as professionals, teachers should perform reasonable amounts of work beyond the normal work day. Under the clause, an argument can be made that grading and preparation must be additionally compensated for.

Few boards have agreed to this clause. Most provide some additional compensation for specific duties.

A Commissioner's Decision on non-teaching assignments was recently upheld by the New Jersey Supreme Court. In that decision which supported the right of boards to make assignment of non-teaching duties to teachers, the Commissioner stated:

A long history of the teaching and supervising of children in public schools has proven that the teacher, with his/her training, experience and knowledge of children, is the best and most effective person to control such situations. This is the reason why teachers have been relied upon, since the virtual inception of the common school as it was originally known, as the persons best able and most suitable to protect the health, safety and welfare of the tens of thousands of school age children whom parents have entrusted to the care of the public schools.

(Long Branch).

B.1.a. and B.2.a. are class size clauses; class size is an illegal topic of bargaining since the Ridgely Park decision. PERC has further held that

b. Junior and Senior High School teachers shall not be required to teach more than () subject area(s), nor more than a total of () teaching preparations.

c. Regular classroom teachers in the junior and senior high schools shall not be required to change subject area teaching stations more than () time(s) during the school day.

d. Secondary teachers shall not be required to teach continuously for more than () periods, nor () where double periods are used.

2. Elementary School

a. The daily workload in the elementary school shall be () students per day and shall not exceed () hours per day.

b. Regular classroom teachers in the elementary school shall not be required to change teaching stations.

c. Elementary teachers shall not be required to teach continuously for more than () hours.

d. Grade level workload shall be equalized.

3. Specialists

The workload of each specialist shall be equalized and shall be determined by the following number of students per specialist:

a. Elementary Level	Options-Per Day/ Per Period/Per Wk.
Art Teachers	_____
Vocal Music Teachers	_____
Foreign Language Teachers	_____
Physical Education Teachers	_____
Guidance Counsellors	_____
Reading Specialists	_____
Nurses	_____
Instructional Media Specialists (Librarians)	_____
Other	_____

b. Secondary Level	Options-Per Day/ Per Period/Per Wk.
Guidance Counsellors	_____
Reading Specialist	_____
Instructional Media Specialists (Librarians)	_____
Distributive Education	_____
Nurses	_____
Other	_____

c. Specialists shall not be required to teach continuously for more than () hours.

4. Reduction of Workload Exceptions

Any class based on the maximum per teacher limits stated in paragraphs 1, 2, and 3 above shall be reduced when the number of pupils assigned to any room is larger than:

the impact upon workload of an increase in class size is not negotiable because it is "inescapably intertwined and inseparable from" the decision to increase class size. By contrast, PERC has generally held that the number of assigned teaching periods and duty periods per day involves "work hours" and is a required topic for negotiations.

B.1.b., c., d., and B.2.b., c., and d. are illegal topics for negotiations. Teacher assignments are a central aspect of a district's educational program. Such clauses are rare in teachers' agreements.

B.3. is the equivalent of a class size clause and is probably illegal.

B.4. is a class size provision and is illegal.

- a. The capacity of teaching facilities, number of adequate teaching stations and number of adequate pupil stations available in the room,
- b. The appropriateness of the room to content of the course, the methods of instruction to be employed, and the prior preparation of teachers therefore,
- c. The availability of equipment for adequate teacher demonstration and student use,
- d. Any other conditions which affect the health, safety, and supervision of the pupils.

5. Overload

- a. Where overload is necessary, teachers shall receive additional salary which shall be calculated by dividing the teacher's salary by the maximum class and multiplying by the number of overload students.
- b. Any overload in excess of five (5) students shall be double the normal overload formula as determined above.
- c. The determination of the actual workload shall be made on the third day of pupil attendance. Any overload shall be calculated and added to a teacher's salary immediately. Any additional overload thereafter shall be added to salary as of the date of the overload.

6. Lunch Periods

a. Grade Level and Other

Teachers shall have a daily duty-free lunch period of at least the following lengths:

1. Elementary School - _____
2. Junior High School - _____
3. Senior High School - _____
4. Other - _____

b. Leaving the Building

Teachers may leave the building without requesting permission during their scheduled duty-free lunch periods.

7. Preparation Time

a. Grade Level

Classroom teachers shall, in addition to their lunch period, have daily preparation time during which they shall not be assigned to any other duties as follows:

1. Elementary School - _____
2. Junior High School - _____
3. Senior High School - _____
4. Other members of the negotiating unit who are not regular classroom teachers shall be provided with preparation time to the same extent as other teachers.

b. Extra Pay and/or Released Time

1. It is desirable for each teacher to have an uninterrupted preparation period each day. The practice of using a regular teacher as a substitute, thereby depriving him/her of his/her preparation period, is undesirable and shall be discouraged. In those cases where regular substitutes are not available, regular teachers who volunteer may be used as substitutes during their non-teaching time. In the absence of volunteers, a teacher may be assigned to serve as substitute. Volunteers and assigned teachers shall be paid at the rate of 1/1000 of their annual contract salary per class covered or the teacher may choose to credit these periods up to a total of () periods which shall entitle him to () additional personal business day(s) to be taken before the end of the current school year. Such coverage shall be arranged by the principal of the school in question and shall be distributed as equitably as possible among the teachers in said school.

2. In those cases where regular substitutes are not available and two classes are to be combined for the day or a major part thereof, the teacher in charge shall be paid 1/200 of his annual contract salary in addition to his regular salary; if the class is divided between two or more other teachers, each teacher teaching any part of the split class shall receive 1/400 of his/her annual salary in addition to his/her regular salary.

B.5. It is likely that PERC will find a clause such as this, which does not prohibit increases in class size but provides premium pay for teaching in such a class, to be legal.

B.6.b. Some boards may desire to require notice of a teacher leaving.

Paragraph 7.a. must be considered in light of the specific requirements and duties of each classification in the unit. It must be also observed that this provision would result in allowing "preparation time" to all administrators, guidance counselors, nurses, etc. It does not appear reasonable to provide this group of individuals with "preparation time" in light of their duties.

c. Exceptions

Exceptions to the provisions of Sections a and b above, may be made only in cases of extreme emergency. The Association shall be notified in each such instance, in advance, if possible.

d. Extra-curricular Activities

1. Approved Activities

The board and the Association agree that the extra-curricular activities listed in Schedule E.

2. Salary

Teacher participation in extra-curricular activities which extend beyond the regularly scheduled in-school day shall be voluntary, and shall be compensated according to the rate of pay and/or released time in Schedule E.

3. Staggered Schedule

In cases where released time is stipulated for extra-curricular assignments, such time shall be scheduled as a block at the beginning or end of the in-school day and attendance of the teacher at school shall not be required during said time.

e. Field Trips

Field trips shall be scheduled and implemented in a manner which shall be mutually agreed upon by teachers participating in them. Written permission for field trips shall be obtained from the superintendent to guarantee insurance coverage as a school-sponsored activity. For participation in field trips which extend beyond the teachers' in-school workday, and overnight or weekend trips, teachers shall be compensated at the rate set forth in Section A, paragraph 4 of this ARTICLE.

8. Meetings

a. Teachers may be required to remain after the end of the regular workday, without additional compensation, for the purpose of attending faculty or other professional meetings () day(s) each month. Such meetings shall begin no later than () minutes after the student dismissal time and shall run for no more than () minutes. Except in cases of an emergency involving the health and safety of students and teachers, if additional time is needed, students shall be dismissed early.

b. Meetings which take place after the regular in-school workday and which require attendance shall not be called on Fridays or on any day immediately preceding any holiday, or other day upon which teacher attendance is not required at school.

c. An association representative may speak to the teachers during any meeting referred to in paragraph 1 above for at least () minutes on the request of the representative.

d. The notice of and agenda for any meeting shall be given to the teachers involved at least () days prior to the meeting, except in an emergency. Teachers shall have the opportunity to suggest items for the agenda.

e. Teachers may be required to attend no more than () evening assignments or meetings each school year without additional compensation.

B.7.c. It is likely that any arbitration award involving this clause that prohibited an employer from acting in an emergency according to the employer's definition of "emergency" would be illegal. See *Balancing Management's Rights and the PERC Law*, earlier.

This clause should conclude "...are educationally worthwhile." It should be rejected as illegal, and because it opens the door for an arbitrator to forbid the termination of an extra-curricular activity.

The decision to assign particular teachers to extra-curricular positions, and the workload increase that necessarily accompanies that decision, is not negotiable. While it is obviously preferable to have voluntary guidance of these activities, circumstances may not allow it for all activities.

B.7.e. The first sentence concerns an illegal topic for negotiations. See the commentary above.

B.8.a. and b. limits the district's ability to schedule after school meetings for faculty. Before agreeing to such a clause, the board must be sure that the administration finds it practical (see *The Role of Supervisors in Negotiations*, earlier.) The clause should be limited to faculty meetings so as not to limit the board's right to schedule parent-teacher meetings or to assign teachers to special assignments and programs presented by the students.

B.8.c. It is legally questionable, and impractical, for the union to have a right to speak at all meetings which teachers are required to attend.

C. Department Heads

Department heads shall not be assigned more than () student instruction-supervision periods each day, and shall be excused from regular study hall duties and homeroom assignments. A student instruction-supervision period means any period during which a teacher is responsible for directing the learning or supervising the behavior of students.

D. Instructional Planning

Every teacher shall plan and teach course content in the manner he considers most practical and useful. Teachers who have received satisfactory evaluations shall not be required to submit standardized daily or weekly lesson plans which involve a mandated procedure or form. Teachers shall provide substitutes with daily, weekly, and/or alternate plans as needed, according to procedures developed by the principal and the Liaison Committee in each building as hereafter established under ARTICLE XXII of this Agreement.

E. A teaching period shall be defined as any pupil contact situation.

F. Any violations of the above procedures which cause inconvenience, additional workload or impact on working conditions shall be remedied immediately.

Article VIII, Nonteaching Duties

A. Intent

The Board and Association acknowledge that a teacher's primary responsibility is to teach and that his energies should, to the extent possible, be utilized to this end. Therefore, they agree as follows:

B. Application

1. List of nonteaching duties

Option (a)

Personnel other than teachers shall perform nonteaching duties and teachers shall not be required to perform the following duties:

1. Nonprofessional assignments, including but not limited to milk distribution and supervision of cafeterias, sidewalks, bus loading or unloading or playgrounds.
2. Collecting money from students.
3. Inventorying and storing books, delivering books to classrooms, duplicating instructional and other materials, keeping registers and cumulative record cards, and other clerical and/or custodial functions.
4. Correcting standardized tests used at the direction of the Board or the Administration.

Option (b)

1. Teachers may volunteer to perform the following nonteaching duties at the rate of \$ per period.

- a. Cafeteria duty
- b. Supervision of playgrounds
- c. Supervision of bus loading
- d. Supervision of bus unloading
- e. Milk distribution

Nonteaching Duties

2. Personnel other than teachers shall perform nonteaching duties and teachers shall not be required to perform the following duties.
 - a. Collecting money from students.
 - b. Inventorying and storing books, delivering books to classrooms, duplicating instructional and other materials, keeping registers and cumulative record cards, and other clerical and/or custodial functions.
 - c. Correcting standardized tests used at the direction of the Board or the Administration.

2. Secretarial assistance

By the beginning of the 19 - school year, the Board shall hire one (1) secretary for every () teachers to assist teachers in the preparation of materials, correspondence, ordering supplies and other duties related exclusively to teachers.

C. Department heads who are truly supervisors within the meaning of the PERC law should not be included in the teachers' agreement.

D. The first sentence is clearly an illegal subject under Ridgefield Park. The rest of this article, if agreed to, would significantly interfere in the educational process and is likely also illegal. (The Liaison Committee article is actually ARTICLE XVIII.)

F. The ambiguity of this clause is enough to warrant its rejection. The reference to "additional workload" may be illegal as it relates to increases in class size.

Paragraph A. of Article VIII is a goal statement and should not be agreed to.

The decision to assign teachers to non-teaching duties involving the supervision of students is a non-negotiable managerial prerogative. See the commentary regarding Article VII.A.4 above. It is likely that the decision to assign any non-teaching duty that is within the traditional responsibility of teachers cannot be subject to negotiations. It is lawful, however, to agree to premium pay for such duties. Very few boards have agreed to such payments, however, because it is illogical to pay someone extra for work which he is presently doing as part of the traditional responsibilities of the position.

The decision to hire secretaries, or any other personnel, is not negotiable.

3. Noneducational activities

Activities which have no educational objective shall be barred from the classroom. There shall be no collection of funds from students for:

- a. Activities in which all pupils are expected to participate which should be legitimately financed by the Board.
- b. Other activities of such a desirable educational nature that they should be legitimately financed by the Board.
- c. Activities and charitable purposes not appropriate or directly related to the age and interests of the pupils.
- d. Activities and charitable purposes beyond the ability to pay of the least able pupil in the class.

4. Transporting students

a. Teachers shall not be required to drive students. A teacher may do so voluntarily, however, with the advance approval of his principal or immediate supervisor. He shall be compensated at the rate of (¢) cents per mile for the use of his own automobile.

b. By the beginning of the 19 school year, the Board shall cover all damages, losses, and expenses incurred by a teacher arising out of the authorized use of his automobile in the performance of school duties.

Article IX, Teacher Employment

A. Certification

1. Standard certificates

The Board agrees to hire only fully certificated teachers holding standard certificates issued by the New Jersey State Board of Examiners for every teaching assignment.

2. Notification

Upon employment the superintendent shall report to the Association in writing the certificates and degrees held, major and minor fields of study, and prior experience of each new teacher.

B. No Reduction

The Board agrees there shall be no reduction in the number of teachers from the previous year in positions defined in the unit represented by the Association as heretofore specified in ARTICLE I, Section A, of this Agreement for the duration of the Agreement.

(Notice to Association Leaders: If reduction in force is a threat in your district, the UniServ office will supply sample language for your contract.)

C. Non-Certificated Personnel

The duties of non-certificated personnel shall be confined solely and exclusively to such duties as would assist certificated professional personnel in the performance of their respective duties. In no case shall any non-certificated employee be requested or required to perform any duty previously performed by a duly certificated professional employee.

The decision as to whether funds will be collected from students, and what those funds will be used for, is not a legal topic for negotiations. Some of the restrictions in this clause may be sound educational/administrative policy, and may already be the practice in your district; they are not, however, suitable topics for labor contracts. Few, if any, boards have agreed to such a clause.

Article IX brings the union into the hiring process. This area is considered, for good reason, a basic management prerogative.

In Ridgefield Park, the Court relied heavily on C.212, the T & E law, which very specifically lists hiring as a policy-making function to be carried out with a "maximum of citizen participation". As such, agreements which limit boards in setting criteria for hiring (within the framework of existing law) are illegal.

There is no valid reason why the superintendent should be required to "report" to the association the information demanded in paragraph A., clause 2 or other similar items frequently demanded.

B. This is an illegal subject of negotiations.

C. The assignment of personnel, as long as it is carried out consistent with existing law, is major educational policy and, therefore, an illegal subject. The second sentence appears to refer to using employees outside of the bargaining unit (see Chapter 2, "Representation," in PERC) to do work normally assigned to members of the unit. This is a required topic for negotiations according to PERC.

D. Placement on Salary Schedule

1. Adjustment to salary schedule

Each teacher shall be placed on his proper step of the salary schedule as of the beginning of the 19 - school year in accordance with paragraph 2 below. Any teacher employed prior to February 1 of any school year shall be given full credit for one (1) year of service toward the next increment step for the following year.

2. Credit for experience

Credit up to the () step of any salary level on the Teacher Salary Schedule shall be given for previous outside teaching experience in a duly accredited school upon initial employment in accordance with the provisions of Schedule A. Additional credit not to exceed () years for military experience or alternative civilian service required by the Selective Service System and credit not to exceed () years for Peace Corps, VISTA or National Teacher Corps work and time spent on a Fulbright Scholarship shall be given upon initial employment. As of the beginning of the 19 - school year, the aforementioned credit shall be given to any presently employed teacher who has not heretofore received it.

E. Returning to the District

A teacher with previous teaching experience in the School District shall upon returning to the system receive full credit on the salary schedule for all outside teaching experience, military experience or alternative civilian service required by the Selective Service System, Peace Corps, VISTA or National Teacher Training Corps work and time spent on a Fulbright Scholarship up to the maximum set forth in Section B above. Such teachers who have not been engaged in other teaching or the other activities indicated above shall, upon returning to the system, be restored to the next position on the salary schedule above that at which they left.

F. Previous Sick Leave Accumulation

Previously accumulated unused leave days shall be restored to all returning teachers.

G. Notification of Contract and Salary

Teachers shall be notified of their contract and salary status for the ensuing year no later than -----.

Article X, Salaries

A. Salary Schedule

The salary of each teacher covered by this Agreement is set forth in Schedule "A" which is attached hereto and made a part hereof.

B. Procedure for Withholding Increment

Regular salary guide increments excluding adjustment may be withheld in whole or in part for inefficiency or other just cause related to the performance of duties and only in accordance with the following:

1. Subject to ARTICLE IV, Section C.

2. That the procedures be adhered to as outlined in ARTICLE XVIII, "Teacher Evaluation".

3. The immediate superior and/or the principal shall not forward any recommendation to withhold a teacher's increment or a part thereof through the superintendent to the Board unless at least (90) ninety calendar days prior thereto, and in no case later than April 1 of the preceding school year in which such action would take effect, the principal has given to the teacher against whom the recommendations shall be made, written notice of the alleged cause(s) for the recommendations specifying the nature thereof with such particulars as to furnish the teacher an opportunity to correct and overcome the same.

4. Once a recommendation is forwarded to the teacher and the Board, the teacher may within ten (10) school days file a grievance commencing at the Superintendent level. No action shall be taken on the recommendation until the grievance is heard according to the grievance procedure as set forth heretofore in ARTICLE III of this Agreement.

5. Any action by the Board to withhold an increment or any part thereof

Paragraphs D.2. and E.: N.J.S.A. 18A:29-9 prescribes that initial placement on the salary schedule "shall be at such point as may be agreed upon." The board should retain the prerogative of such placement. Note, however, that N.J.S.A. 18A:29-11 requires a board to give credit on the salary guide for military service, with a maximum of four years credit. This has been interpreted to apply to longevity payments also, in certain limited circumstances. Wall Township, 149 NJ Super 126 (1977).

D.2. requires that the board grant credit for outside volunteer employment. This clause might result in the non-hiring of teaching personnel with this background because of the additional cost to districts.

Paragraph F.: There is no statutory compulsion that boards grant such a provision.

Agreement as to dates involved in Article XI, paragraph G., should be made only after careful consultation with the superintendent.

Early notification dates have caused extreme difficulties in many districts.

Paragraph B. of this article restricts the board's authority to withhold a teacher's salary increment. In *Bernards Township*, the Supreme Court held such a restriction to be illegal (see *The Scope of Negotiations*, earlier). The only aspects of withholding of an increment that may be negotiated are procedural matters that are consistent with N.J.S.A. 18A:29-14, such as notice to the teacher of the intent to withhold the increment, and the right to grieve the board's decision to advisory arbitration (see *Employee Grievances*, earlier.) (The article on teacher evaluation is actually ARTICLE XIV.)

shall be subject to appeal to arbitration as set forth in ARTICLE III of this Agreement. The arbitrator shall have the authority to restore all or part of the increment withheld retroactively.

6. Salary guide increment or part thereof withheld under this provision shall be restored the following year unless the procedures set forth in this provision are followed once again, in which case the increment or increments previously withheld and any additional increments which may be due may be withheld in whole or in part.

C. Method of Payment

1. Twelve (12) month

Each member employed on a twelve (12) month basis shall have the option of being paid in twenty-four semi-monthly installments or in twelve (12) monthly installments.

2. Ten (10) month

Each teacher employed on a ten (10) month basis shall have the option of being paid in twenty (20) equal semi-monthly installments, or ten (10) equal monthly installments.

3. Summer pay plan

Each teacher may individually elect to have ten (10%) percent of his monthly salary deducted from his pay. These funds shall be paid to the teacher or his estate on the final pay day in June, according to a schedule of payment throughout the summer as requested by the teacher, or upon death or termination of employment, if earlier.

4. Exceptions

When a pay day falls on or during a school holiday, vacation or week-end, teachers shall receive their pay checks on the last previous working day.

5. Final pay

Each teacher shall receive his final pay and the pay schedule for the following year on his last working day in June.

Article XI, Teacher Work Stations

A. Procedure

1. All teachers shall be given written notice of their salary schedules, class and/or subject stations, building and room stations for the forthcoming year not later than . A list of said schedules and stations shall be simultaneously sent to the Association.

2. The superintendent shall notify all newly-appointed personnel of their specific positions within that subject area and/or grade level for which the Board has appointed them. The Superintendent shall give notice of work stations to new teachers as soon as practicable, and except in cases of emergency, not later than

3. In the event that changes in such schedules, class and/or subject, building or room stations are proposed after , the Association and any teacher affected shall be notified promptly in writing and, upon the request of the teacher and the Association, the changes shall be promptly reviewed between the superintendent or his representative and the teacher affected and at his option a representative of the Association.

B. Teachers shall only be assigned to teach in areas for which they hold a standard teaching certificate issued by the New Jersey State Board of Examiners.

C. 1. Schedules of teachers who travel to more than one school shall be arranged so that no such teacher shall be required to engage in an unreasonable amount of inter-school travel. Such teachers shall be notified of any changes in their schedules as soon as practicable.

2. Teachers who may be required to use their own automobiles in the performance of their duties and/or teachers who are assigned to more than one (1) school per day shall be reimbursed for all such travel at the rate of () cents per mile for all driving done between arrival at the first location at the beginning of their workday, provided, however, that if the distance from the teacher's home to his first location or from the teacher's last location to his home is greater than the distance between the teacher's home and his base school, he shall be reimbursed for the difference at the rate of () cents per mile.

Agreements with respect to methods of payment must meet your own administrative needs and be consistent with legal requirements.

Notice provisions related to teacher assignment are required subjects for negotiations. Any aspect of this article, however, which infringes on the right of boards to make education related decisions regarding assignments is illegal. Most of this article was subject to PERC analysis in a recent decision, Fairview Board of Education, PERC No. 80-18.

Paragraph A.1., 2., and 3. concern required topics for negotiations, because they are strictly procedural in nature. The dates on which notice can reasonably be given is a judgment for your district's administrators making these assignments.

This is an illegal topic because it concerns the criteria for assignment.

C.1. The first sentence of this clause is illegal because it imposes a limitation upon the Board's ability to make up teacher schedules. The second sentence is procedural and negotiable.

D. Procedure for Change in Teacher Work Stations

1. The superintendent shall deliver to the association and post in all school buildings a list of the known vacancies as they occur.

2. Teachers who desire a change in grade and/or subject station or who desire to change to another building may file a written statement of such desire with the superintendent. Such statement shall include the grade and/or subject to which the teacher desires to be placed and the school or schools to which he/she desires to be placed, in order of preference. Such requests for change in the work station for the following year shall be submitted no later than

3. As soon as practicable, and no later than _____, the superintendent shall post in each school and deliver to the Association a system-wide schedule showing the names of all teachers whose work station has been changed, including the nature of the change.

4. In the determination of requests for a change in work station, the wishes of the individual teacher shall be honored to the extent that the change does not conflict with the instructional requirements and best interests of the school system. No such request shall be denied arbitrarily, capriciously, or without basis in fact. If a teacher's request for change has been denied, a renewed or subsequent request made in the following school year shall be granted under the conditions described above, unless there is no available position or an adequate replacement for the teacher cannot be obtained. If more than one teacher has applied for the same position, the determination as to which teacher shall receive it shall be made by lottery.

5. No vacancy shall be filled by means of involuntary change in work station if there is a qualified volunteer available to fill said position.

6. Notice of a voluntary change in work station shall be given to teachers as soon as practicable, and except in cases of emergency not later than

7. When an involuntary change in work station is necessary, a teacher's area of competence, major or minor field of study, length of service in the _____ School District, length of service in the particular school building, and other relevant factors, including, among other things, state and/or federal laws, rules, regulations or administrative directives, shall be considered in determining which teacher is to be selected for a change in work station.

8. An involuntary change in work station shall be made only after a meeting between the teacher involved and the [insert appropriate title], at which time the teacher shall be notified of the reason therefor. In the event that a teacher objects to the change at this meeting, upon the request of the teacher, the superintendent shall meet with him. The teacher may, at his option, have Association representative(s) present at such meeting.

9. A list of open positions in the school district shall be made available to all teachers being involuntarily changed. Such teachers may request the work stations in order of preference, to which they desire to be changed. All such teachers shall be given adequate time off for the purpose of visiting schools at which open positions exist. Teachers being involuntarily changed from their present positions shall have preference over those seeking voluntary change in regard to choice among those positions which are vacant. A teacher being involuntarily changed shall be placed only in an equivalent position - i.e., one which among other things does not involve reduction in rank or in total compensation.

D.1., 2., 3., and 6. are procedural and negotiable. If agreed to, be certain any dates included are administratively feasible.

D. 4. and 5. are illegal because they concern the criteria for selection and assignment of personnel.

D.7. also concerns criteria for assignment and is illegal.

D.8. This section is illegal insofar as it prohibits the involuntary assignment until after a meeting between the affected teacher and an administrator. The rest of the clause is procedural in nature, and can be negotiated. Before agreeing to such a matter, consult with your superintendent as to the efficiency of his meeting with every teacher unhappy with their assignment.

D.9. The first two sentences in this paragraph are procedural and negotiable, and may be acceptable to most boards. The third sentence is likewise negotiable, but may cause too many administrative problems regarding the length and scheduling of such visits to be acceptable in your district.

The fourth sentence gives preference to involuntarily transferred teachers in filling vacancies. Such preference is illegal because it interferes in the assignment of personnel by management.

10. Any teacher whose work station is changed shall be provided assistance in the following manner:

a. In cases of changes on work station during the work year, the teacher shall be provided one work week free of pupil contact in order to prepare for the new work station.

b. In cases of changes in work station determined during the summer vacation period, or changes scheduled during the work year effective for the next work year, the teacher shall have the option to work any one work week during the summer vacation period. The teacher shall be compensated at the rate of pay appropriate to the new work year.

c. In the event a teacher takes courses related to the change in work station, the board shall pay the full cost of tuition and all related personal expenses.

Article XII, Promotions

A. Positions Included

Promotional positions are defined as follows:

Positions paying a salary differential and/or positions on the administrator-supervisory levels of responsibility including but not limited to positions as (list by title)

All vacancies in promotional positions, including specialists and/or special projects teachers, pupil personnel workers and positions in programs funded by the federal government shall be adequately publicized by the superintendent in accordance with the following procedure:

1. Date of posting

When school is in session, a notice shall be posted in each school as far in advance as practicable, ordinarily at least thirty (30) school days before the final date when applications must be submitted and in no event less than fifteen (15) school days before such date. A copy of said notice shall be given to the Association at the time of posting. Teachers who desire to apply for such vacancies shall submit their applications in writing to the superintendent within the time limit specified in the notice, and the superintendent shall acknowledge promptly in writing the receipt of all such applications. Applications shall be kept on file in the superintendent's office for continual consideration for future vacancies until the office is notified in writing by an applicant that the application is withdrawn.

2. Application procedure

Teachers who desire to apply for a promotional position which may be filled during the summer period when school is not regularly in session shall submit their names to the superintendent, together with the position(s) for which they desire to apply, and an address where they can be reached during the summer. The superintendent shall notify such teachers of any vacancy in a position for which they desire to apply. Such notice shall be sent as far in advance as practicable, ordinarily at least twenty-one (21) days before the final date when applications must be submitted and in no event less than fourteen (14) days before such date. In addition, the superintendent shall, within the same time period, post a list of promotional positions to be filled during the summer period at the administration office, in each school, and a copy of said notice shall be given to the Association.

B. Criteria for Notice

In both situations set forth in Section A above, the qualifications for the position, its duties, and the rate of compensation, shall be clearly set forth. The qualifications set forth for a particular position shall not be changed when such future vacancies occur unless the Association has been notified in advance of such changes and the reasons therefor. A disagreement over the necessity for such changes shall be subject to the grievance procedures set forth in this Agreement. No vacancy in a promotional position shall be filled other than in accordance with the above procedure.

The last sentence is legal in some aspects, but at least potentially illegal in others. It is legal to the extent that it concerns matters that are themselves negotiable, e.g. protection against decreased compensation. It would be illegal if it were interpreted to concern non-negotiable matters; "equivalent position" cannot refer to class size, teaching assignment, or other such items.

D.10 has not been considered by PERC. It appears to be negotiable, relating only to paid leaves, extra compensation, and tuition reimbursement. 10a. and b., however, will be found by most boards to be unnecessary and therefore unacceptable.

If the board agrees to a notification procedure for promotions, the time limits agreed-upon must be feasible.

The proposed definition of promotion should include reference not only to increased salary or salary differential, but should also make clear that extra work and/or extra pay assignments should not constitute promotions.

There appears to be no good reason to require the superintendent to acknowledge a request for a promotion; if, however, such acknowledgement must be made, it should be nothing more than a simple form reply.

The superintendent should not be required to maintain a continuous file nor be required to constantly review old applications until such applications are withdrawn. A new application should be required for each vacancy.

It should be stated definitely and clearly that it is the function of the superintendent to determine the qualifications required for any promotion.

B. The first sentence is a required subject of negotiations. The balance of the clause is an illegal subject.

C. Two Optional Plans (Select One)

Option (a)

All qualified teachers shall be given adequate opportunity to make application and no position shall be filled until all properly submitted applications have been considered. The Board agrees to give due consideration to the professional background and attainments of all applicants, and other relevant factors. In filling such vacancies, preference shall be given to qualified teachers already employed by the Board and when all other factors are substantially equal, length of time in the School District shall be the deciding factor. Each teacher applicant not selected shall, upon request, receive a written explanation from the superintendent. Appointments shall be posted in the schools or the giving of notification to the interested teachers. Announcements of appointments shall be made by posting a list in the office of the central administration and in each school building. The list shall be given to the Association and shall indicate which positions have been filled and by whom.

Option (b)

1. All qualified teachers shall be given adequate opportunity to make application for such positions and no positions shall be filled until all properly submitted applications have been considered. The Board agrees to give due weight to the professional background and attainments of all applicants and other relevant factors. In filling such vacancies, preference shall be given to qualified teachers already employed by the Board and when all other factors are substantially equal, length of time in the School District shall be the deciding factor.
2. All promotional positions shall be filled according to the following procedures:
 - a. Each applicant who meets the qualifications for a vacancy shall be interviewed by a committee of () persons, () appointed by the superintendent and () appointed by the president of the Association, and a record of the interview shall be filed with the application. Interview ratings for each applicant shall be prepared independently by each member of the committee.
 - b. The committee shall then combine the independent interview ratings, together with the applicant's formal training, professional experience and experience in the School District into a total rating.
 - c. All applicants shall be placed on a ranked list according to their total ratings.
 - d. Selection for a vacancy shall be made from among the three (3) top ranking applicants by the superintendent with the approval of the interviewing committee.
3. Appointments shall be made not later than sixty (60) days after the notice is posted in the schools or the giving of notification to the interested teachers. Announcements of appointments shall be made by posting a list in the office of the central administration and in each school building, and a list shall be given to the Association indicating which positions have been filled and by whom.

Article XIII. Accredited Evening High School - Summer School - Home Teaching and Federal Programs

A. Posting

All openings for positions in the accredited evening high school, summer school, home teaching, federal projects, and other programs (including non-teaching positions for which teachers may be qualified and eligible) shall be publicized by the superintendent in accordance with the procedure for publicizing promotional vacancies set forth in ARTICLE XVI, Sections A and B of this Agreement. Summer school and accredited evening high school openings shall be publicized not later than the preceding March 1 and June 1 respectively and teachers shall be notified of the action taken not later than May 1 and September 1, respectively. Home teaching openings shall be posted as they occur.

B. Criteria

In filling such positions, consideration shall be given to a teacher's area of competence, major and/or minor field of study, quality of teaching performance, attendance record, and length of service in the School District. When all other factors are substantially equal, preference shall be given first to teachers who have taught the subject area and/or grade level in question during the regular school year and then to teachers who have taught the grade and/or subject in question on a regular basis at any time during the preceding () years. Teachers employed in the

School District shall have priority to such assignments before appointment to applicants from outside the district.

C. In Option (a) the first sentence and sentences four through seven are procedural issues normally held by PERC to be required topics.

The second and third sentences go to the criteria for promotion and are thus illegal topics.

In Option (b), only the first sentence of the first paragraph and the last sentence of the last paragraph are procedural and negotiable. The rest of this article deals with the criteria for promotion and seriously restricts a board's discretion in this area.

For a detailed analysis by PERC on a similar clause, see Board of Education of the City of Newark, PERC No. 80-2, 5 NJPER 10156.

The first question concerning this article is: are evening high school and summer school program personnel included in your bargaining unit? If they are not, there should be no negotiations over the terms and conditions of employment for those positions.

Even if certain positions are not included in the bargaining unit, requirements for notification of position openings is a required subject (no concessions must be made in this area). The dates contained in A. may be too early in some districts.

B. The criteria for selection of employees is not negotiable.

C. Salary

Salary schedules for positions included in this ARTICLE shall be negotiated under procedures outlined in ARTICLE II of this Agreement along with regular salary schedules wherever possible, or at such other times as may be appropriate in order to conform to the time requirements for the implementation of said programs.

D. Coverage by Master Agreement

All of the provisions of this Agreement shall apply to teachers holding positions in the accredited evening high school, summer school, home teaching and/or under federal programs, except where clearly inapplicable.

Article XIV, Teacher Evaluation

A. Evaluation Committee

1. Membership

No later than September 15, 19 , the Board and the Association agree to establish an Evaluation Committee consisting of () members, and () members appointed by the Board, and () members appointed by the Association.

2. Responsibility

This Committee shall develop specific criteria for the evaluation of teachers.

3. Report Date

The recommendations shall be submitted for adoption to the Board and the Association no later than December 15, 19 .

B. Procedure

1. Frequency

a. Teachers shall be observed through classroom visitation by a certified supervisor at least () times in each school year, to be followed in each instance by a written evaluation report and by a conference between the teacher and his immediate supervisor for the purpose of identifying any deficiencies,

Again, C. and D. relate to terms and conditions of employment, but should not be a subject of negotiations unless these positions are included in the bargaining unit.

Two major decisions by PERC provide considerable guidance on the legality of the Sample Agreement language. These cases should be carefully reviewed before negotiating on this topic. **Bethlehem Board of Education**, PERC No. 80-5, 5 NJPER 10159 and **Fairview Board of Education**, cited above.

Because of the State Board's rules on tenured teacher evaluation, there is a different range of negotiable items for tenured teachers as compared to non-tenured teachers. In either case, all educational policy matters, such as the criteria for evaluation and the selection of the evaluator, are non-negotiable. For tenured teachers there are substantial limits on the kinds of evaluation procedures that can be negotiated, because districts must conform to the extensive State Board regulations. The legal requirements for the evaluation of non-tenured teachers are less comprehensive, so there is more room for negotiations in this area.

Equally important to knowing the law on this topic is to know what is practical and effective in teacher evaluation. The opinions of your administrative staff are invaluable here.

Because the criteria for evaluation is an illegal subject, the creation of a committee, not wholly composed of the board, is also an illegal subject. While the board should encourage wide professional involvement in evaluation criteria development, that involvement may not exclude the public or even individual teachers by resulting in a negotiated agreement with the union.

B.1.a. is procedural and negotiable.

extending assistance for their correction and improving instruction. Each observation shall consist of at least a full period in the junior/senior high school or a complete lesson in the elementary school(s).

b. Teachers shall be informed of classroom visitation at least five (5) work days in advance of said visitation.

c. Classroom visitations/observation shall not occur on the same day, nor shall any observation occur prior to the previous evaluation conference. In no case should any observation occur within ten (10) school days of the previous evaluation. All visitations/observations shall occur in the same work year.

2. Non-tenured Review

Violations of or disagreements over any of the provisions of this ARTICLE in cases involving nonrenewal of contract or termination of employment of nontenure teachers shall be subject to review under the Fair Dismissal Procedure established in ARTICLE XIX of this Agreement and shall be considered grounds for reinstatement without loss of pay or any other benefit provided by this Agreement.

3. Open Evaluation

All monitoring or observation of the work performance of a teacher shall be conducted openly and with full knowledge of the teacher. The use of eavesdropping, public address, cameras, audio systems, and similar surveillance devices shall be strictly prohibited.

4. Evaluation by Certificated Supervisors

a. Teachers shall be evaluated only by persons certificated by the New Jersey State Board of Examiners to supervise instruction. By September 1 of each school year, each teacher shall be given the name of the person who will evaluate his/her classroom performance.

b. Evaluators shall be regular full-time employees of the school district and shall be certified in the instructional areas they are evaluating.

5. Copies of Evaluations

A teacher shall be given a copy of any class visit evaluation report prepared by his/her evaluator at least one (1) day before any conference to discuss it. No such report shall be submitted to the central office, placed in the teacher's file or otherwise acted upon without prior conference with the teacher. No teacher shall be required to sign a blank or incomplete evaluation form.

6. Conferences

Evaluation conferences as described in Section B.1 shall occur within fifteen (15) days of the observation. The conference shall be held within the school day without loss of benefit to the teacher.

7. Right to Representation

A teacher shall have the right to representation in an evaluation conference.

PERC has held advanced notice of evaluations to directly affect the substantive aspects of the evaluation process and therefore to be illegal topics for negotiations.

B.1.c. This is procedural and negotiable.

B.2. PERC has ruled, in keeping with various court decisions, that the decision to renew or not renew a non-tenured teacher is a non-negotiable management right. Hence this clause is illegal. (The Fair Dismissal Procedure is actually found at ARTICLE XV of the Sample Agreement.)

B.3. is negotiable.

B.4.a. The first sentence limits the board in selecting its evaluators, and is illegal. The second sentence, providing that teachers be notified of their evaluator's name, is procedural and negotiable. B.4.b. is illegal because it restricts the board's right to hire and assign employees.

B.5. The first and third sentences are legally negotiable. The second sentence is negotiable for non-tenured teachers, and mandated for tenured teachers under the State Board regulations.

B 6. is negotiable.

B.7. is negotiable. Note that there is no right to such representation without a negotiated agreement so stating. A school board must consider the overall effect on the evaluation process of having a union representative

8. Standardized Tests

Results of standardized tests used for evaluating students shall not be used to evaluate teacher performance.

9. Communication

Prior to any evaluation report the immediate supervisor of a teacher shall have had appropriate communication, including but not limited to all steps in paragraph 10 below and the provisions of ARTICLE XXVIII, Section B of this Agreement with said teacher regarding his performance as a teacher.

10. Reports

Evaluation reports shall be presented to each teacher in accordance with the following procedures:

a. Such reports shall be issued in the name of the evaluator. The evaluator is the person who observed the teaching performance as required in Section B. of this ARTICLE.

b. Such reports shall be addressed to the teacher.

c. Such reports shall be written in narrative form and shall include, when pertinent:

- (1) Strengths of the teacher as evidenced during the period since the previous report.
- (2) Areas of improvement needed by the teacher as evidenced during the period since the previous report. If these areas of improvement are not repeated in subsequent reports said areas shall be considered remedied.
- (3) Specific suggestions as to measures which the teacher might take to improve his performance in each of the areas wherein weaknesses have been indicated.
- (4) Upon request the evaluator shall demonstrate the proper method(s) to correct any areas of improvement.

11. Final Evaluation

The annual summary evaluation of a teacher shall be determined by a compilation of the required evaluations as provided in this ARTICLE.

C. Personnel Records

1. File

A teacher shall have the right, upon request, to review the contents of his personnel file and to receive copies at Board expense of any documents contained therein. A teacher shall be entitled to have representative(s) of the Association accompany him/her during such review. At least once every () years, a teacher shall have the right to indicate those documents and/or other materials in his file which he/she believes to be obsolete or otherwise inappropriate to retain. Said documents shall be reviewed by the Superintendent or his designee and if, in fact, they are obsolete or otherwise inappropriate to retain, they shall be destroyed. Disputes over the retention of said documents may be processed through the grievance procedure, commencing at Level Two.

2. Derogatory Material

No material derogatory to a teacher's conduct, service, character or personality or any material which could have an adverse effect on a teacher's status shall be placed in his/her personnel file unless the teacher has had an opportunity to review the material. The teacher shall acknowledge that he/she has had the opportunity to

present during an evaluation conference.

B.8. is illegal as interference in the selection of evaluation criteria, and as contrary to the State Board regulations.

B.9. is negotiable insofar as paragraph 10 is legal. The reference in the last two lines should be to ARTICLE XXV Section B. of the Sample Agreement, concerning an employee's right to counseling by his immediate superior.

B.10. concerns the content of the evaluation report and is for the most part preempted by the State Board rules as they apply to tenured teachers. Only B.10.b, mandating that reports be addressed to the teacher, is a negotiable addition to tenured teacher evaluation procedures.

B.10.c. outlines the specific contents of the evaluation report. PERC has specifically ruled that B.10.c.(4) is not negotiable because it "relates to the evaluation." Following this logic it appears that all of B.10.c. is non-negotiable for non-tenured employees because it involves the substantive content of the report rather than the procedures involved, and therefore limits managerial prerogatives.

B.11, according to PERC, is not negotiable because it concerns the content of the report.

Paragraph C., clause 1: To make disputes over whether or not materials included in the personnel file shall be expunged subject to the grievance process seems unwise. Since teachers generally have the ability to rebut materials contained in the file there seems little reason to become involved in controversy concerning expungement.

review such material by affixing his signature to the copy to be filed with the express understanding that such signature in no way indicates agreement with the contents thereof. The teacher shall also have the right to submit a written answer to such material and his answer shall be reviewed by the Superintendent or his designee and attached to the file copy.

3. No Separate File

Although the Board agrees to protect the confidentiality of personal references, academic credentials and other similar documents, it shall not establish any separate personnel file which is not available for the teacher's inspection.

D. Termination of Employment

Final evaluation of a teacher upon termination of his/her employment shall be concluded prior to any recommendation for severance and no documents and/or other material shall be placed in his/her personnel file of such teacher after severance or otherwise than in accordance with the procedure set forth in this ARTICLE.

Article XV, Fair Dismissal Procedure

A. Fair Dismissal Committee

1. Membership

No later than September 15, 19 , the Board and the Association agree to establish a Fair Dismissal Committee consisting of () members, () members appointed by the Board and () members appointed by the Association.

2. Responsibility

This Committee shall develop specific criteria which shall be used for nonrenewal of contract or termination of employment for nontenure teachers.

3. Report date

The recommended criteria shall be submitted for adoption to the Board and the Association no later than December 15, 19 , and shall become an addendum to this Agreement.

4. Distribution to nontenure teachers

The Board shall provide said criteria to all presently employed nontenure teachers, as soon as possible after adoption.

B. Notification of Status

1. Date

On or before April 30 of each year, the Board shall give to each nontenure teacher con-

Paragraph D. was ruled non-negotiable by PERC because it limited what could be placed in a teacher's personnel file.

In 1975, the Legislature enacted a statute and the State Board of Education enacted rules more specifically enforcing the rights of nontenured teachers set forth in the Donaldson case.

It is important to note that Chapter 132 does not alter the basic relationship between a board and its nontenured teachers. The nature of a nontenured teacher's contract of employment with a school board is one for personal services with a commencement and a terminating date. When the terminal date has been reached, the contract is discharged and there are no longer any rights, duties, or obligations chargeable to either party to the previous agreement. In short, no relationship binding in law exists between the parties, and so it has been held in several instances by the Courts of the State of New Jersey.

Because criteria for dismissal is an illegal subject, a committee to develop such criteria is also an illegal subject.

A.4. is a term and condition of employment.

B.1. is a restatement of law and unnecessary.

tinuously employed since the preceding September 30 either:

- a. A written offer of a contract for employment for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary and benefits as may be required by law or agreement between the Board and the Association, or
- b. A written notice that such employment shall not be offered.

2. Reasons

Any nontenure teacher who receives a notice of nonemployment may within five (5) days thereafter, in writing, request a statement of reasons for such nonemployment from the superintendent, which statement shall be given to the teacher in writing within five (5) days after receipt of such request.

3. Hearing

Any nontenure teacher who has received such notice of nonemployment and statement of reasons shall be entitled to a hearing before the Board, provided a written request for hearing is received in the office of the secretary of the Board within five (5) days after receipt by the teacher of the statement of reasons.

4. Board determination

The Board shall issue its written determination as to the employment or nonemployment of said nontenure teacher for the next succeeding school year within five (5) days after the completion of the hearing. Said proceedings shall be completed and the Board's determination presented to the teacher no later than May 31.

5. Appeal to grievance procedure

If the teacher disagrees with the determination of the Board, he may submit the dispute through the grievance procedure as set forth in ARTICLE III of this Agreement, and said grievance shall commence at Level 3. In the event said grievance is submitted to arbitration, the arbitrator may restore the teacher to continued employment and may restore any loss of pay and/or benefits retroactively to which the teacher would be en-

B.2. is a paraphrase of law and changes the board's legal obligations. 18A:27-3.2 requires that the board supply a written statement of reasons within thirty days, not the five listed in this sample clause. For some reason, this clause again attempts to decrease teachers' statutory rights to request reasons from the present fifteen days to five.

B.3. The Administrative Code very specifically requires an informal appearance, not a hearing. It is not to be an adversary proceeding; it should be of reasonable length; the teacher may be represented by one person or counsel; witnesses may be presented with no cross-examination; appearances shall be in private.

B.4. The Administrative Code supporting the non-tenure evaluation law requires that the board's written determination be issued within three days of the informal appearance, not the five days listed in this clause.

Additionally, there is no requirement that a written decision issue prior to May 31st. Assume that notice not to reemploy was given on April 30th. The statement of reasons is requested on May 15th. The reasons are given on June 14th. On June 24th (the ten day period set forth in Administrative Code), the affected teacher seeks an appearance which is held on July 24th, with a written determination issued on July 27th. Of course, most boards will proceed more quickly than this but if both parties exhausted each time limit, there would be no way to finish the process before late July.

B.5. As stated above, PERC has held that arbitrators have no authority to review a board's decision not to renew a non-tenured teacher. Arbitrators can hear grievances over proce-

titled under the terms and conditions of employment required by law or this Agreement between the Board and the Association.

C. Failure to Comply

Should the Board fail to give a nontenure teacher either an offer of contract for employment for the next succeeding year or a notice that such employment shall not be offered and upon request by the teacher to the superintendent, a statement of reasons and a hearing, and in the event of such hearing shall fail to make and serve a copy of the determination, all within the time and in the manner provided by this ARTICLE, the Board shall be deemed to have offered to that teacher continued employment for the next succeeding school year upon the terms and conditions of employment as may be required by law or agreement between the Board and the Association.

D. Notification of Intention to Return

If the teacher desires to accept such employment, he shall notify the Board of such acceptance, in writing, on or before June 1, in which event such employment shall continue as provided for herein. In default of such notice the Board shall not be required to continue the employment of the teacher.

E. Termination of Employment

Any nontenure teacher who receives a notice that his employment shall be terminated shall be entitled to a statement of reasons and a hearing as provided for in paragraphs 2, 3, 4, and 5 of this Section except that a determination of the Board shall be made and served thirty (30) days before the expiration of the notice period provided for in said contract. Should the Board fail to comply therewith, then said notice of termination shall be invalid and of no force and effect and the employment of the teacher shall continue as if such notice had not been given.

Article XVI, Complaint Procedure

A. Procedural Requirement

Any complaints regarding a teacher made to any member of the administration by any parent, student, or other person which does or may influence evaluation of a teacher shall be processed according to the procedure outlined below.

B. Meeting with Principal or Immediate Superior

The principal or immediate superior shall meet with the teacher to apprise the teacher of the full nature of the complaint and they shall attempt to resolve the matter informally.

C. Right to Representation

The teacher shall have the right to be represented by the Association at any meetings or conferences regarding such complaint.

D. Procedure

Step 1.

In the event a complaint is unresolved to the satisfaction of all parties, the teacher may request a conference with the complainant to attempt to resolve the complaint. If the complaint is unresolved as a result of such conference or if no mutually acceptable conference can be agreed on, the complaint shall move to Step 2.

Step 2.

Any complaint unresolved under Step One at the request of the teacher or the complainant shall be reviewed by the building principal or counterpart supervisor in an attempt to resolve the matter to the satisfaction of all parties concerned.

Step 3.

Any complaint unresolved at Step Two may be submitted in writing by the complainant or the teacher to the building principal or counterpart supervisor who shall forthwith forward a copy to the superintendent or his designee and the complainant.

Step 4.

Upon receipt of the written complaint the superintendent or his designee shall confer with all parties. The teacher shall have the right to be present at all meetings of the superintendent or his designee and the complainant.

Step 5.

If the superintendent or his designee is unable to resolve a complaint to the satisfaction of all parties concerned, at the request of the complainant or the teacher he shall forward the results of his investigation along with his recommendation, in writing, to the Board and a copy to all parties concerned.

Step 6.

After receipt of the findings and recommendations of the superintendent or his designee, and before action thereon, the Board shall afford the parties the opportunity to meet

dural violations under this article, but it appears that, even if a procedural violation is found, the arbitrator is without any power to order reinstatement.

The essence of this article deals with a complaint lodged against a teacher, generally from an outside non-administrative source for which the teacher grieves for relief and remedy against a potential damaging influence which such complaint may have against the teacher's evaluation report.

Very few boards have any form of complaint procedure in their agreement.

It would appear that Paragraph A., B. and C. of this article should alone suffice to ensure fair and equitable treatment to any complaint so lodged against a teacher.

with the Board and show cause why the recommendations of the superintendent or his designee should not be followed. Copies of the action taken by the Board shall be forwarded to all parties.

Step 7.

Any complaint unresolved under Step 6, may be submitted by the teacher to the grievance procedure as set forth in ARTICLE III of this Agreement and shall commence at Level 3.

Article XVII, Teacher Facilities

A. Listing of Facilities

By the beginning of the 19 - school year, each school shall have the following facilities:

1. All rooms which are used for purposes of instruction during any portion of the months of May, June, July, August, September, and October shall be air conditioned;
2. Space for each teacher within each instructional area in which he teaches to store his instructional materials and supplies;
3. An air-conditioned teacher work area containing adequate equipment and supplies to aid in the preparation of instructional materials;
4. An appropriately furnished and air-conditioned room which shall be reserved for the exclusive use of teachers as a faculty lounge. Although teachers shall be expected to exercise reasonable care in maintaining the appearance and cleanliness of said lounge, it shall be regularly cleaned by the school's custodial staff.
5. A private pay telephone in each faculty lounge for the exclusive use of teachers;
6. A serviceable desk, chair, and filing cabinet for the exclusive use of each teacher;
7. A communication system so that teachers can communicate with the main building office from their classrooms;
8. Well-lighted and clean teacher rest rooms, separate for each sex and separate from the student's rest rooms;
9. A separate, private dining area for the exclusive use of the teachers;
10. Free and adequate off-street paved parking facilities, which are protected against vandalism, properly maintained, and identified exclusively for teacher use;
11. Suitable, private closet space with lock and key for each teacher to store coats, overshoes, and personal articles;
12. Copies, exclusively for each teacher's use, of all texts used in each of the courses he is to teach;
13. Adequate chalkboard space in every classroom;
14. A complete and unabridged dictionary in every classroom;
15. Adequate books, paper, pencils, pens, chalk, erasers and other such material required in daily teaching responsibility.

B. Special Clothing

By the beginning of the 19 - school year, the Board shall provide gym uniforms for physical education teachers, smocks for art and home economics teachers, laboratory coats for laboratory science teachers, shop coats for vocational and industrial arts teachers. Proper laundering service for all of said items shall be provided without charge to the teacher.

C. Work Room and Office

By the beginning of the 19 - school year, an appropriate room and other facilities for teachers who work in more than one school building shall be assigned to them in each school in which they work to permit the effective discharge of their responsibilities to their pupils. Such teachers shall also be assigned a single classroom or office for their exclusive use outside of regular teaching hours, with a desk or other equivalent facility and a place to store materials and supplies for their personal use.

D. Answering Service

The Board agrees to provide an answering service between p.m. and a.m. for teachers to report unavailability for work. Once a teacher has reported unavailability, it shall be the responsibility of the administration to arrange for a substitute.

E. Vending Machines

Upon the request of the Association, vending machines shall be installed in the teachers' lounge and teachers' lunchroom areas. The proceeds from all such machines shall be placed in a student scholarship fund created for that purpose. Awarding of scholarships shall be administered jointly by the Association and the superintendent. The Teacher-Administration Liaison Committee in each building established according to the provisions of ARTICLE XXII of this Agreement shall develop mutually acceptable procedures for servicing said machines and accounting for the funds.

All of the items demanded in paragraph A. must be questioned in light of the existing facilities in the district to determine the extent of change or if, indeed, change is at all possible or necessary.

Any item involving the building or improvement or the use of space within the building should hinge first upon the requirements for classrooms. The board should reject such specific agreement as requested. Paragraph B. must be considered strictly as a cost item.

Paragraph C. again presents a question concerning the allocation of space in specific schools. It must be examined by the board in light of maintenance of flexibility with respect to the utilization of space, now and in the future.

The Teacher-Administration Liaison Committee clause is actually found in ARTICLE XVIII.

F. Keys

In order to permit freedom of access both during and after regular school hours, all teachers shall be given keys to the faculty lounge, teacher work area, and interior hallway gates of their base school, and, upon request, and subject to reasonable regulation, shall be provided with a key or other means of access to an outside door in their area of the building during nonschool hours.

G. Student Transportation

By the beginning of the 19 - school year, the Board shall provide a vehicle and a driver for the transportation of individual students or small groups of students. Said vehicle and driver shall be used to transport sick students from school to home during the course of the school day.

Article XVIII, Teacher-Administration Liaison

A. Building Level Faculty Council

1. Organization

The Association shall select a Faculty Council for each school building which shall meet with the principal at least once a month during the school day for the duration of the school year. Said Council shall consist of not more than one (1) member for every () teachers in the school building, but shall in no event have less than () members.

2. Areas for Faculty Council consideration

Areas for consideration by the Council shall include but not be limited to school building level decisions regarding:

- a. Administration of this Agreement;
- b. Facilitation of programs and recommendations of the Instructional Council hereafter established in ARTICLE XXIII of this Agreement;
- c. Revision and development of building policies and practices.

B. Meetings with Superintendent

The Association's representatives shall meet with the superintendent at least once a month during the school year to review and discuss current school problems and practices and the administration of this Agreement

Article XIX, Instructional Council

A. Organization

1. Purpose

An Instructional Council shall be established and shall meet not later than 19 . The purpose of the Council shall be to strengthen the education program through recommendations, research, implementation, and evaluation by the superintendent and the Association to best meet the needs of the students, the schools, and the community. The Council may consider, but not be limited to, advising the Board and the Association on such matters as curriculum improvements, teaching techniques, instructional organizational patterns, experimentation, extra curricular programs, in-service training and staff development, pupil testing and evaluation, philosophy and educational goals of the district, teacher recruitment, research, educational specifications for buildings, and other related matters regarding the effective operation of the School District.

2. Membership

The Council shall consist of () representatives appointed by the superintendent and () representatives appointed by the Association.

3. Committees

The Council shall be authorized to establish sub-committees or ad hoc committees for specific projects to allow for those who would be affected by Council recommendations to have an opportunity to be involved.

4. Individual initiative for suggestions

The Council shall encourage the initiation of ideas and suggestions for projects by individual teachers, departments, grade levels, Association committees, administrators, Board members, students, parents, or other interested parties.

Paragraph F. presents essentially a security problem with respect to the distribution of keys, and therefore, it must be so examined.

This is not a term and condition of employment and, therefore, an illegal subject.

A recent PERC decision held that a Board-Teacher Liaison Committee proposal was a required topic for negotiations. This committee would have a majority of management representatives, would engage in discussions, not negotiations, and would meet at the agreement of the parties. The clause specifically guaranteed that the existence of the committee would not preclude the board from exercising any of its legal rights. With these caveats, PERC ruled that such a liaison committee, even though it would discuss only non-negotiable matters, was itself a required topic for negotiations.

It is likely, therefore, that the establishment of monthly meetings between the Faculty Council and the school administration to discuss non-negotiable matters is legally negotiable, as a non-binding forum for the expression of teacher concerns over non-negotiable matters.

It is not clear whether PERC's analysis regarding a Board-Teacher Liaison Committee will be applied to Instructional Councils. The language in the Sample Agreement is much broader than that in the PERC case, and potentially much more restrictive.

Boards receiving this demand should consider establishing such a committee outside of the labor agreement, at the building and/or district level, for on-going consultation on non-negotiable matters. See Employee Relations in the Context of the Labor Agreement, earlier.

5. Additional members

Nothing in this ARTICLE shall be interpreted to prevent the Council from consulting or appointing to its committees such additional teachers, administrators, professional advisors, students, parents, or other persons as the original members herein designated shall determine are desirable and appropriate for said purposes. In the event that professional consultants are added, the Board agrees to provide adequate funds to pay for each such service.

6. Rules of procedure

The Council shall establish its own rules of procedure and shall provide for a rotating chairman who shall be responsible for the arrangement and conduct of meetings.

7. Meetings

The Council shall meet at least once each month.

8. Information

The Council and its sub-committees shall be provided with the same access to available school district information as provided to the Association as specified in ARTICLE V, Section A of this Agreement.

B. Reports

1. Board and Association action

The Board and the Association shall consider and study all written recommendations submitted by the Council for action. If the Board or the Association refuses to adopt any such recommendations, it shall state the specific reasons for such refusal in writing to the Council.

2. Minority reports

Reports of the Council or any sub-committee established by the Council may include minority as well as majority views.

C. Budget

As of September 1, 19 , the Board shall provide (\$) dollars to the Instructional Council for the purpose of assisting said Council in establishing effective procedures for decision-making in implementing the responsibilities stated above in the School District.

D. Teacher Participation

1. Pay

Teachers who serve on the Instructional Council or any sub-committee organized by it beyond the regularly scheduled in-school day or in-school year shall be paid at the rate specified in ARTICLE VII, Section A, paragraph 4 of this Agreement.

2. Released time

In addition to whatever unassigned time they may be entitled to under the terms of this Agreement, teachers who are members of the Instructional Council or any of its sub-committees shall be provided with released time at the following rate for the purpose of working on any of the projects defined above:

- | | |
|--------------------------|---------------------|
| a. Elementary Schools — | () periods per day |
| b. Junior High Schools — | () periods per day |
| c. Senior High Schools — | () periods per day |
| d. Other — | () periods per day |

E. Clerical Assistance

Adequate secretarial and clerical assistance shall be provided for the Council.

Article XX, Sick Leave

A. Accumulative

As of September 1, 19 , all teachers employed shall be entitled to () sick leave days each school year as of the first official day of said school year whether or not they report for duty on that day. Unused sick leave days shall be accumulated from year to year with no maximum limit.

B. Transfer from Other Districts

As of September 1, 19 , whenever the Board employs a teacher who has an unused accumulation of sick leave days from another school district in New Jersey, the Board shall grant additional sick leave credit in addition to the annual and accumulated sick leave provided in Section A of this ARTICLE as follows:

1. For the first year of employment in the School District a minimum of () days or such lesser amount as may have been accumulated in the former district.
2. For each subsequent year of employment in the School District an additional () days until all of the days accumulated in the former district have been credited.

3. The accumulation of sick leave days from another district shall be credited in accordance with the procedure outlined above after certification from the prior employing school district. The days of sick leave so credited may be used immediately or if not so

The amount of sick leave granted beyond ten days a year is purely a matter of economic ability and educational need. Any concession in this area should achieve an equivalent concession by the union.

B.3. The transfer of sick leave credit is not required by law and has

used shall be accumulative for additional leave thereafter as may be needed.

4. The aforementioned sick leave credit shall be given to any presently employed teacher under the provisions described above.

C. Nonaccumulative

Nonaccumulative additional sick leave benefits shall be allowed to teachers according to the following schedule:

(Local Association option on type of additional nonaccumulative sick leave to be submitted.)

D. Summer School

As of September 1, 19 , teachers employed in the summer school program shall be granted () nonaccumulative sick leave days.

E. Notification of Accumulation

Teachers shall be given a written accounting of accumulated sick leave days no later than September of each school year.

F. Retirement

Upon retirement, the retiring teacher shall be compensated for his or her accumulated sick leave at the rate of pay at the time of retirement.

Article XXI, Temporary Leaves of Absence

A. Types of Leave

As of the beginning of the 19 - school year, teachers shall be entitled to the following temporary nonaccumulative leaves of absence with full pay each school year:

1. Personal

() days leave of absence for personal, legal, business, household or family matters which require absence during school hours. Application to the teacher's principal or other immediate superior for personal leave shall be made at least () day(s) before taking such leave (except in the case of emergencies) and the applicant for such leave shall not be required to state the reason for taking such leave other than that he is taking it under this Section.

2. Religious

Up to () days per school year for observance of religious holi-

been negotiated into very few contracts.

C. The State Board of Education, consistent with PERC and Appellate Court cases, recently ruled that automatic grants of sick leave beyond accumulated days were prohibited by N.J.S.A. 18A:30-6. Ramsey Board of Education. Boards must retain the discretion to act on requests for extended sick leave on an individual case basis.

Paragraph D. covers summer school jobs which are not in the bargaining unit. For this reason, this clause should be rejected.

F. Payment for unused accumulated sick leave is being negotiated in more districts each year. The cost of these clauses varies tremendously, however, depending upon the rate of pay per accumulated day, the minimum years of service for eligibility, and the maximum allowable payment per employee. There is no evidence that such a clause discourages sick leave abuse. See *Negotiations News*, May/June 1979, for a discussion of causes and curbs regarding excessive teacher absenteeism.

Any agreement on such a clause should provide for a fixed dollar per day payment, rather than keeping the payment to a percent of daily salary. This avoids an automatic increase in the cost of the benefit each year; every increase in the per day payment must be achieved through new bargaining.

A.1. For a thorough analysis of personal leave clauses, see *An Analysis of Selected Contract Clauses*, earlier.

A.2. PERC has held that contract clauses granting paid leave for reli-

days, where said observance prevents the teacher from working on said days.

3. School visitation

Up to () days for the purpose of visiting other schools or attending meetings or conferences of an educational nature.

4. Community service leave

Any teacher who is a member of a community service organization or who is requested by any such organization to attend or participate in meetings or programs of the organization conducted during school hours shall be granted time off with pay for such purpose upon request.

5. Conferences of affiliates

Up to () days for () representatives of the Association to attend conferences and conventions of state and national affiliated organizations.

6. Legal

Time necessary for appearances in any legal proceeding connected with the teacher's employment or with the school system or in any other legal proceeding if the teacher is required by law to attend.

7. Death

Up to () days at any one time in the event of death or serious illness of a teacher's spouse, child, son-in-law, daughter-in-law, parent, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, and any other member of the immediate household. Teachers shall be granted up to () days in the event of death of a teacher's friend or relative outside the teacher's immediate family as defined above. In the event of the death of a teacher or student in the School District, the principal or immediate superior of said teacher or student shall grant to an appropriate number of teachers sufficient time off to attend the funeral.

8. Summer school

Up to a total of () days at the end of a school year and/or at the beginning of a school year, as may be required to attend summer school classes and/or to travel to the place where such classes are to be held.

9. Marriage and honeymoon

Up to () days for the purpose of marriage and honeymoon or up to () days for the purpose of attending the marriage of a member of the immediate family.

10. Temporary Military

Time necessary for persons called into temporary active duty of any unit of the U. S. Reserves or the State National Guard. A teacher shall be paid his regular pay in addition to any pay which he receives from the state or federal government.

11. Good cause

Other leaves of absence with pay may be granted by the Board for good reason.

gious holidays, which is not deducted from personal or vacation days equally available to non-religious employees, is unconstitutional. Hunterdon Central High School Board of Education, PERC No. 80-40, 5 NJPER 10158. Permitting employees to use personal or vacation leave for religious observance, on the other hand, is legally negotiable.

Paragraphs A.3. to A.9. must be analyzed locally regarding their cost and effect on administrative and educational efficiency. A.6. should, at the least, not include legal appearances where the board and teacher are adversaries, e.g. tenure hearings and PERC hearings.

A., 11. can present serious difficulties especially to boards who have "past practice" or "savings clauses." The granting of additional leaves might establish an unwanted precedent. Unfortunately, a labor contract sometimes has the effect of limiting the ability of an employer to grant fringe benefits in excess of the contract simply because the employer's concern for employees in a given situation can require the employer to grant the same benefit in all similar cases.

B. In Addition to Sick Leave

Leaves taken pursuant to Section A above shall be in addition to any sick leave to which the teacher is entitled.

C. NJEA Convention

Each teacher who attends the NJEA Convention shall fully be compensated for all costs incurred for travel, tolls, meals and hotel.

Article XXIII, Extended Leaves of Absence

A. Association

The Board agrees that up to () teachers designated by the Association shall, upon request, be granted a leave of absence without pay for up to () year(s) for the purpose of engaging in activities of the Association or its affiliates.

B. International and Federal Programs

A leave of absence without pay of up to () years shall be granted to any teacher who joins the Peace Corps, VISTA, National Teachers Corps, or serves as an exchange teacher or overseas teacher, and is a full-time participant in either of such programs, or accepts a Fulbright Scholarship.

C. Outside Teaching

A teacher on tenure shall be granted a leave of absence without pay for up to () years to teach in an accredited college or university, private school or other public school district.

D. Military

Military leave without pay shall be granted to any teacher who is inducted or enlists in any branch of the armed forces of the United States for the period of said service and three (3) months thereafter, or three (3) months after recovery of any wound or sickness at time of discharge. A similar leave shall be granted to the spouse of any teacher who is so inducted or who enlists to join him for the period of special training in preparation for duty overseas in combat zones.

E. Maternity

1. Natural Birth

The Board shall grant maternity leave without pay to any teacher upon request subject to the following stipulations and limitations:

- (a) Maternity leave shall commence and terminate, on the date requested by the teacher.
- (b) Any teacher granted maternity leave without pay according to the provisions of this section may at her discretion elect to use all or any part of her accumulated sick leave during the period of such absence and receive full pay and benefits for the same.
- (c) Any teacher granted maternity leave shall at her request be restored to the exact same teaching position, subject area, and grade level vacated at the commencement of said leave.
- (d) No teacher shall be required to leave work because of pregnancy at any specific time prior to expected childbirth nor be prevented from returning to work after childbirth solely on the ground that there has not been a time lapse of specific duration between childbirth and the desired date of return.

C. First, Chapter 123 as noted earlier, prohibits an employer from assisting a union. The NJEA is a union. While no decision in this area has been issued, it is very possible that any agreement to this clause or any payment under it, is a violation of law.

Practically, paragraph C. is unacceptable even if legal. There is no limit on any expense incurred. The cost to the board could be enormous if only a portion of teachers sought reimbursement for their expenses. In these days of tight budgets, some even requiring the layoff of teachers, this doesn't seem to be in the best interests of anyone.

In consideration of the extended leaves of absence demanded in Article XXIII, it should be noted that most of these leaves are for periods of time without pay. The board must bear in mind that future demands in this area will probably be for a certain percentage of pay for these leaves. Thus, while such leaves might not appear to be a cost item at this time, they might become so in the future.

The granting of any of the leaves in this area, other than sick leave, should be upon application to the superintendent for approval unless the board specifically provides otherwise.

The general rule is that disabilities resulting from pregnancy must be treated the same as other disabilities. This general legal principle is based upon rulings involving state law and in new amendments to a federal statute.

Based on this principle, employees must be permitted to use accumulated sick leave for periods of disability due to pregnancy to the same extent and in the same manner that such sick leave can be used for other disabilities. Of course, as with other illnesses, the board may require a physician's certificate documenting the physical inability to work. The board may also

- (e) The Board shall not remove any teacher from her duties during pregnancy unless the teacher cannot produce a certificate from her physician that she is medically able to continue teaching.
- (f) The Board shall not discriminate against any person in violation of N.J.S.A. 10:5-1 et. seq., The Law Against Discrimination, nor in violation of the Constitutions of the State of New Jersey and of the United States.

2. Any teacher who does not elect to take a maternity leave may continue to perform her duties as long as physically able to do so and will be entitled to return to her duties when her physician certifies that she is physically able to do so. The period of such absence will be deemed the same as for any other physical disability and she will be entitled to her annual and accumulated sick leave with pay during the period of absence.

require the teacher to undergo a physical by a doctor it appoints and, if there is a disagreement between doctors, a third neutral doctor can be appointed to issue a final binding opinion. These procedures to document the physical disability can be used for pregnancy disabilities just the same as with other types of disabilities.

Employees may not be removed from their teaching duties based solely on the fact of pregnancy. Similarly, employees cannot be required to stop working any specified number of months prior to childbirth.

However, because of the general rule that pregnancy disabilities be treated the same as other disabilities, a board may require an employee to stop work if performance declines due to physical incapacity. But again, the board can do so only if it removes other employees who are unable to adequately perform duties because of other physical conditions.

Similarly, an employee must be permitted to return to work as soon after childbirth as she is physically able if she so desires. But again, the board can require the teacher to produce a doctor's certificate indicating that she is again physically able to perform her duties. An employee returning from sick leave due to pregnancy is entitled all benefits to which employees returning from other types of disability leaves would be entitled.

Each of the above principles applies to sick leave for the actual period of disability associated with pregnancy. An entirely separate issue is the granting of extended leaves of absence for child rearing purposes. There is no legal requirement that such extended child care leaves be made available to board employees. If it is made available by negotiated agreement, the board can stringently regulate its availability and duration by requiring advance notice and by allowing only certain beginning and return dates to minimize classroom interruption.

Because of the confusion between sick leave and extended leaves of absence, boards would be well advised to negotiate express provisions covering 1) sick leave for the period of actual disability, and 2) child rearing leave.

3 Adoption

Any female teacher adopting an infant child shall receive similar leave which shall commence upon her receiving *de facto* custody of said infant, or earlier if necessary to fulfill the requirements for the adoption. No teacher on maternity leave shall, on the basis of said leave, be denied the opportunity to substitute in the School District in the area of her certification or competence.

F. Illness in Family

A leave of absence without pay of up to () year(s) shall be granted for the purpose of caring for a sick member of the teacher's immediate family. Additional leave may be granted at the discretion of the Board.

G. Political

The Board shall grant a leave of absence without pay to any teacher to campaign for or serve in a public office, or to campaign for a candidate for a public office other than himself.

H. Good Cause

Other leaves of absence without pay may be granted by the Board for good reason.

I. Return from Leave

1. Salary

Upon return from leave granted pursuant to this ARTICLE, a teacher shall be considered as if he were actively employed by the Board during the leave and shall be placed on the salary schedule at the level he would have achieved if he had not been absent.

2. Benefits

All benefits to which a teacher was entitled at the time his leave of absence commenced, including unused accumulated sick leave and credits toward sabbatical eligibility, shall be restored to him upon his return, and he shall be assigned to the same position which he held at the time said leave commenced, if available or, if not, to a substantially equivalent position.

J. Extension and Renewals

All extensions or renewals of leaves shall be applied for and granted in writing.

Article XXIV, *Sabbatical Leaves*

A. Purpose

A sabbatical leave shall be granted to a teacher by the Board for study, including study in another area of specialization, for travel, or for other reasons of value to the school system.

B. Conditions

Sabbatical leave shall be granted, subject to the following conditions:

1. Percentage of teachers

If there are sufficient qualified applicants, sabbatical leaves shall be granted to a minimum of (%) percent of teachers at any one time.

2. Requests

Requests for sabbatical leave must be received by the superintendent in writing in such form as may be mutually agreed on by the Association and the superintendent, no later than January 1, and action must be taken on all such requests no later than February 1, of the school year preceding the school year for which the sabbatical leave is requested.

3. Minimum time to qualify

The teacher has completed at least seven (7) full school years of service in the School District.

4. Pay

A teacher on sabbatical leave (either for one-half (½) of a school year or for a full school year) shall be paid by the Board at (%) percent of the salary rate which he would have received if he had remained on active duty if said leave is for study and at (%) percent if for travel or other reason.

5. Return

Upon return from sabbatical leave, a teacher shall be placed on the salary schedule at the level which he would have achieved had he remained actively employed in the system during the period of his absence and he shall be credited with all other benefits for which he would have entitled during the period of his leave and continuing thereafter upon his return.

E.2. Adoption differs from pregnancy-related disability and sickness. It is akin to child-rearing leave. There is no obligation to agree to adoption leave. This clause is discriminatory in that it applies only to female teachers.

Any time the board agrees to the phrase "immediate family" in the contract, it should be sure to clearly define who is included in that relationship.

I.1. There is no requirement that credit for teaching be given during periods of extended leave without pay.

For a thorough analysis of sabbatical leave clauses, see *An Analysis of Selected Contract Clauses*, earlier.

A. Purpose

In our rapidly changing society teachers must constantly review curricular content, teaching methods and materials, educational philosophy and goals, social change and other topics related to education. The Board recognizes that it shares with its professional staff responsibility for the upgrading and updating of teacher performance and attitudes. The Board and the Association support the principle of continuing training of teachers and the improvement of instruction. The parties further agree that each teacher should fulfill the obligation for professional improvement in ways that best serve his own problems, functions, interests, and needs.

B. Assistance for Teachers

Within any one (1) week, a teacher who shall so request shall be granted at least thirty (30) minutes of counseling with his immediate superior. Such meetings shall be scheduled within the teacher work day and the teacher released from other duties therefor.

C. Programs

The Board agrees to implement the following at the beginning of the 19 - school year.

1. Pay and expenses for required training

To pay the full cost of tuition and other reasonable expenses incurred in connection with any courses, workshops, seminars, conferences, in-service training sessions, or other such sessions which a teacher is required and/or requested by the administration to take. Said teacher shall also be compensated for all time spent in actual attendance at said sessions beyond his regular working day and year at his regular rate as defined in ARTICLE VII, Section A, paragraph 4 of this Agreement.

2. Professional Development Committee for reimbursement

a. To establish a Professional Development Committee to act upon requests from teachers for authorization to attend courses, workshop, seminars, conferences, in-service training sessions or other such sessions. Within () days after signing this Agreement, the superintendent and the president of the Association shall each appoint () members to the Committee and they shall select a chairman from among themselves. The superintendent and the president of the Association may, from time to time, replace members appointed by them.

b. To pay the reasonable expenses (including fees, meals, lodging and/or transportation) incurred by teachers who attend such sessions with the approval of the Professional Development Committee.

3. In-service workshops, conferences, programs

a. The Board shall provide in-service professional improvement programs which shall be cooperatively planned in the instructional council to meet priorities jointly determined by the Association and the administration. In-service programs shall be conducted during the in-school teacher workday if teacher attendance is required. All programs conducted during the summer shall be voluntary and compensated at the rate set forth in ARTICLE VII, Section A, paragraph 4.

b. Teachers who participate in an in-service program shall be given credit for each program as provided in schedule D.

4. Professional library

To expend up to (\$) dollars per teacher each school year to purchase books, equipment and/or other educational resource materials, as may be recommended by the aforementioned Professional Development Committee for use by the professional staff for professional development and educational improvement. The Board shall provide adequate space for housing said books and materials in convenient and readily accessible locations.

5. Recruitment

To establish a Recruitment Committee to study and improve teacher recruitment. This Committee shall develop ways to utilize incumbent teachers who agree to be recruiters. The superintendent and the president of the Association shall each appoint () members to this Committee and they shall choose a chairman from among them-

The question of the board agreeing to make certain payments in connection with this article would be an appropriate subject for collective negotiations under the law.

There is no need for A. Moreover, the second and fourth sentences are probably illegal in light of Ridgefield Park.

Paragraph B. provides for further reduction in the time a teacher might spend with students. Certainly such time can be found, without contract language, during preparation periods or, for elementary teachers, immediately after school. As professionals in other areas regularly expect to devote additional time to their profession beyond an eight hour day, so should teachers.

If the committee under C.2. is entrusted with determinations of the value of various in-service and professional development courses or programs, this is probably an illegal subject.

Ridgefield Park would seem to make the first sentence of C.3.a. an illegal subject. The balance of a. and all of b. relate to terms and conditions of employment.

C.4. is not a required subject of bargaining.

Unlike four or five years ago, teacher unions show little or no interest in clauses like this.

C.5. This is not a term and condition of employment but is a major educational policy function and is, therefore, an illegal area.

selves. Teachers who participate as members of this Committee shall suffer no loss of compensation and shall be reimbursed for any travel and expenses incurred in the performance of their functions.

6. Summer program for professional development

To appropriate (\$) dollars for a Voluntary Summer Program for Professional Development to afford teachers the opportunity to participate in activities which they propose and which shall contribute to the professional development of the participating teacher and to the educational advantage of the children served by the District. Participation in this program shall take place for a period of not more than one (1) month during July and/or August and participants shall be remunerated on a prorated basis, according to their monthly salary for the school year beginning July 1 of the summer employed.

a. Teachers may apply for this program no later than . Applications shall be submitted to a Screening Committee consisting of () members selected by the superintendent and () members selected by the Association. The Committee shall receive, review, and approve or disapprove applications. All applicants shall be notified no later than May 1 of each year as to whether their applications have been approved.

b. The funds appropriated for this program shall be used to finance projects evaluated by the Screening Committee as fulfilling the objectives of the program.

c. The Screening Committee shall establish its own rules of procedure.

7. Innovative grants

To appropriate (\$) dollars to establish a grant program to make funds available to teachers interested in designing and implementing innovative educational ideas and techniques.

a. The aim and purpose of this Section shall be to encourage creative and innovative teachers to experiment in order to better meet the educational needs of the students of the School District.

b. An Innovative Review Committee consisting of () members appointed by the superintendent and () members appointed by the Association shall be established no later than October 1, 19 . Said Committee shall receive, review, and approve or disapprove applications for grants. Applications for grants shall be submitted no later than and awards shall be announced no later than

c. No individual grant under the terms of this Section shall exceed (\$) dollars.

d. The Innovative Review Committee shall establish its own rules of procedure.

8. Experimentation

a. The Association and the Board have a mutual responsibility to promote better instruction. The Board welcomes Association participation in all aspects of strengthening the education program to best meet the needs of the students, the schools, and the community.

b. The Association may participate in any aspect of an experimental or other project or program. Such participation shall include, but not be limited to, all phases of proposals, inquiry, study, research, deliberations, recommendations, implementation, evaluation, and adoption. Any aspect of an experimental program which would affect the terms and conditions of teacher employment shall be negotiated with the Association before implementation.

C.8.a. is a general goal statement and should be rejected.

C.8.b. should be read carefully. The implications of this clause are obvious. With respect to any committee set up, whether or not under contract, boards might consider if the union represents all the teachers. The reliance solely on the union for committee membership and input could isolate the administration and the board from important numbers of teachers.

The new T & E obligations of boards require broad participation of teaching staff members and the community. No contractual agreement should limit that participation.

4. through 8. are almost never contained in contracts.

Consultation in the area of student teacher supervision seems desirable. Control of that program either

Article XXVI, Supervision of Student Teachers

A. Mutual Responsibility

There is a continuing need for the recruitment of able teacher candidates and for the

improvement of their preparation. Teachers enlisted to teach in any situation must be provided an education based on the best academic preparation supplemented with numerous planned experiences which can provide a working understanding of the students and classroom with which teachers must function effectively. Through the cooperation of the

School District and the Association, the student teacher is provided with the setting to apply the professional knowledge and skills, theories, and philosophies which have been developed through college courses and related experiences. The Board and the Association accept the joint responsibility to prepare teachers and to provide student teachers with direct field experiences in the School District that are relevant to the teaching act.

B. Procedures

The following procedures shall govern the supervision of student teachers:

1. Teaching experience

No teacher shall have a student teacher under his supervision unless said teacher has had at least three years of teaching experience, with the most recent year in his present position.

2. Voluntary participation

Supervision by a teacher of a student teacher shall be voluntary. Each teacher shall be polled prior to any school year for willingness to participate in the student teaching program, but this shall not be construed as acceptance of any particular student teaching assignment.

3. Academic record of student teachers

Prior to the assignment of student teachers, the superintendent shall request each prospective student teacher to provide prospective cooperating teachers a transcript of college courses and grades to date, statements relative to his academic proficiency from not fewer than () of his college instructors, and a statement from his college assessing his potential strengths and weaknesses as exhibited in any previous field experiences or related training programs in classroom procedures or student relationships.

4. Consent

Each prospective cooperating teacher may accept or reject any student teacher. The teacher shall receive the request to take a student teacher at least () weeks prior to the student's introduction to the classroom.

5. Released time

Each cooperating teacher shall be provided with released time with pay for attendance at regularly scheduled orientation and evaluation sessions sponsored by a student teacher's college or university.

6. Assignments

A cooperating teacher shall not involuntarily be given additional assignments outside of his regular responsibilities during the period he is supervising a student teacher.

7. Assuming responsibilities

The cooperating teacher and the student teacher shall assess the latter's readiness to assume teaching responsibilities and the cooperating teacher shall have authority for determining in what degrees those responsibilities shall be assumed.

8. Explanation of school personnel responsibilities

The superintendent, or his designee, shall arrange for other school personnel, including teachers, principal, remedial instructors, guidance counselors, curriculum coordinator, school psychologist, school nurse, and school social worker to assist the cooperating teacher in providing an understanding of their roles for the student teacher.

9. Materials and supplies

a. Upon request, a cooperating teacher shall be provided with a duplicate copy of all instructional materials and teacher manuals for use by the student teacher assigned.

b. Upon request, a cooperating teacher shall be provided with those school records which he feels necessary for an understanding of the field experience by the student teacher. Upon completion of the field experience, the cooperating teacher shall arrange with the student teacher for the return of all such copies of student records.

10. Eligibility to teach

A student teacher shall be permitted to teach unsupervised only in areas for which he will be eligible for certification and only after the approval of the cooperating teacher.

11. Substitution

In accordance with State regulations, a student teacher can not be used as a substitute teacher.

12. Information for cooperating teachers

The superintendent, or his designee, shall arrange for each cooperating teacher to be provided in writing with the following in accordance with college procedures:

a. Information about the student teacher, such as his background, college record, interests, talents, and special problems of which the cooperating teacher and school administrator should be aware.

b. Information about the college program and the college's expectations and requirements for student teachers.

c. Specific information about the date the student will begin the assignment, when he will complete the assignment, and holidays or special events which affect the

by individual teacher or by the union does not. Almost no district in the State has negotiated on this topic.

The control over student teaching programs by the union through negotiated agreement is illegal. Certain provisions of this article do relate to teachers' terms and conditions of employment and are required subjects.

Given Ridgefield Park, it would appear that the following provisions are illegal: B.1., B.2., B.3., B.4., B.7., B.8., B.9.b., B.10., B.11., B.12.a. and b., and B.13. Those governing terms and conditions would seem to be: B.5., B.6., B.9.a. and B.12.c.

Some of the illegal matters are simply not terms and conditions of employment of the teacher (such as B.11., already covered by State law; it does not directly affect a teacher's working conditions). Others go to major educational policy-making (such as B.7.).

student teacher's attendance.

13. Orientation

Prior to the commencement of the student teaching experience, the superintendent shall request that the prospective student teacher visit the School District for appropriate orientation by the superintendent or his designee and the cooperating teacher.

Article XXVII, *Protection of Teachers, Students and Property*

A. Unsafe and Hazardous Conditions

Teachers shall not be required to work under unsafe or hazardous conditions or to perform tasks which endanger their health, safety, or well-being.

B. Procedure for Hazardous Conditions

When the Association makes a determination on a district-wide basis or a Faculty Council, as heretofore established in ARTICLE XXII, determines on a building basis that conditions are unsafe or hazardous for the health, safety, or well-being of students and teachers, the following conditions shall be established and exist until rescinded by the same body:

1. Meetings

In the event of any disorder or disruption in the regular school program, the Board, superintendent or affected building principals shall meet with the Association immediately on request of the Association to develop mutually acceptable programs to guarantee the safety of students, teachers, and property.

2. Association representatives

Representatives of the Association shall be allowed free access to buildings and teachers until conditions are no longer unsafe and hazardous.

3. Closings

The Association shall be consulted and be allowed to submit recommendations for consideration before any judgment is made to open or close school.

The topic of employee safety is a required subject. Recent discussions of violence against teachers should spur interest in this subject area.

With respect to the remaining paragraphs in Article XXVII, Title 18A of the New Jersey law imposes certain specific requirements and liabilities on the board. It should be emphasized again that the attempt to paraphrase the law, sections of the law, or intentions of the law, should not be agreed to. If it is deemed necessary to discuss or to quote the law, it must be done verbatim. Due to this aspect of this particular demand, the board should, with its attorney, carefully consider this specific proposal. More specifically, the terms unsafe or hazardous conditions which endanger "health safety or well being" is conspicuously vague. Does the lack of air conditioning endanger well being? It is important to note grievances may arise from such a provision and decisions flowing from such grievances may be beyond the ability of the board to comply without the expenditure of vast sums of money.

B.1. This clause, to the extent it does not deal with teachers' safety and personal property, is non-negotiable. PERC recently ruled that a public employer can refuse to meet or negotiate with employee representatives during an emergency situation, even though employees' terms and conditions were affected. The Faculty Council clause is actually found in ARTICLE XVIII.

B.3. Other rulings, noted in the commentary accompanying ARTICLE XI, hold that the implementation of a management decision cannot be held up by a requirement to meet with employees or unions prior to the implementation.

4. Unauthorized visitors

During said unsafe and hazardous period, persons not employed by the School District shall not be allowed into any school without the knowledge and permission of the senior faculty representative in a building. This shall apply to students visiting a school other than where they are assigned.

C. Reasonable Force

As specified in 18A:6-1, a teacher may, within the scope of his employment, use and apply such amount of force as is reasonable and necessary: To quell a disturbance threatening physical injury to others; to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil; for the purpose of self-defense; and for the protection of persons or property.

D. Action before Board or Commissioner

Whenever any action is brought against a teacher before the Board or before the Commissioner of Education of the State of New Jersey which may affect his employment or salary status, the Board of Education shall reimburse him for the cost of his defense if the action is dismissed or results in a final decision in favor of the teacher.

E. Assault

1. Legal assistance

The Board shall give full support including legal and other assistance for any assault upon the teacher while acting in the discharge of his duties.

2. Leave

When absence arises out of or from such assault or injury, the teacher shall be entitled to full salary and other benefits for the period of such absence but shall not forfeit any sick leave or personal leave.

3. Reimbursement for personal property damage

The Board shall reimburse teachers for the reasonable cost of any clothing or other personal property damaged or destroyed as a result of an assault suffered by a teacher while the teacher was acting in the discharge of his duties within the scope of his employment.

4. Medical

The Board shall reimburse a teacher for the cost of medical, surgical or hospital services incurred as the result of any injury sustained in the course of his employment.

5. Workmen's Compensation

Benefits derived under this or subsequent Agreements shall continue beyond the period of any Workmen's Compensation until the complete recovery of any teacher when absence arises out of or from assault or injury.

F. Reporting Assaults

1. Principal or immediate superior

Teachers shall immediately report cases of assault suffered by them in connection with their employment to their principal or other immediate superior.

2. Superintendent

Such notification shall be immediately forwarded to the superintendent who shall comply with any reasonable request from the teacher for information in the possession of the superintendent relating to the incident or the persons involved, and shall act in appropriate ways as liaison between the teacher, the police, and the courts.

G. Nurse

A school nurse shall be scheduled to be in each building for the entire school day as heretofore defined in ARTICLE VII, Section A of this Agreement.

B.4. This is an illegal delegation of managerial authority to a labor union.

E.1. through 4. would be acceptable if they stipulated that such injury or legal proceeding was not determined to be the fault of the teacher.

F.2. Access to confidential student records is not a term and condition of employment and, therefore, is an illegal topic.

Paragraph G. deals with a demand that requires the board to negotiate the scheduling of nurses. The board must insist that such a question is a matter for it to determine unilaterally. It represents a basic policy question and is not an item to be included in the terms and conditions of employment. N.J.S.A. 18A:40-1 et seq. prescribes the board's duties with respect to scheduling school nurses.

The board must retain the ultimate responsibility for the maintenance of control and discipline in the classroom. This is not an item that can be

Article XXVIII, Maintenance of Classroom Control and Discipline

A. Definition of Responsibilities

A definition of the duties and responsibilities of all administrators, coordinators, supervisors and other personnel pertaining to student behavior shall be reduced to writing by

the superintendent and presented to each teacher at the start of each school year.

B. Special Assistance

When, in the judgment of a teacher, a student requires the attention of the principal, assistant principal, a counselor, psychologist, physician or other specialist, he shall so inform his principal or immediate superior. The principal or immediate superior shall arrange as soon as possible for a conference among himself, the teacher, and an appropriate specialist to discuss the problem and to decide upon appropriate steps for its resolution.

C. Disruptive Students

When, in the judgment of a teacher, a student is by his behavior seriously disrupting the instructional program to the detriment of other students, the teacher may exclude the student from the classroom and refer him to the principal. In such cases the principal shall arrange as soon as possible, and under normal circumstances not later than the conclusion of the following school day, a conference among himself, the teacher and possibly an appropriate specialist to discuss the problem and to decide upon appropriate steps for its resolution. If the teacher in question objects to the proposed readmission of said student to the classroom, the matter shall, within twenty-four (24) hours after the decision by the principal, be referred to an ad hoc committee consisting of two (2) members appointed by the principal, two (2) members appointed by the teacher and a fifth (5th) member, who shall act as chairman, appointed by the other four (4) members. Said committee shall consult with the teacher, the principal, and other appropriate professional and/or lay persons, including the student's parents and/or guardians, and shall render a final decision in the matter within () days after the conclusion of such consultation.

D. Student Behavior Committee

As soon as possible after the execution of this Agreement, a joint Student Behavior Committee (consisting of () members appointed by the superintendent and () members appointed by the Association) shall be established to develop appropriate guidelines to be used by teachers in handling disruptive students and to develop constructive programs for disruptive students whose presence in regular classes represent unusual problems for the regular learning process. Recommendations shall be submitted to the Instructional Council established pursuant to ARTICLE XXIII of this Agreement.

E. Building Procedures

An appropriate student disciplinary procedure shall be developed for each school building by its Liaison Committee (established pursuant to ARTICLE XXII of this Agreement). Said procedure shall be submitted to the building faculty for approval prior to its implementation.

F. Expanded Involvement

Nothing in this ARTICLE pertaining to the development of guidelines and procedures by the Student Behavior Committee or each school's Liaison Committee shall be interpreted to prevent these committees from consulting or adding to their number such additional teachers, professional advisors, parents, students, or other persons as the original members herein designated shall determine are desirable and appropriate for said purposes.

Article XXIX, Insurance Protection

A. Full Health-Care Coverage

As of the beginning of the 19 - school year, the Board shall provide the health-care insurance protection designated below. The Board shall pay the full premium for each teacher and in cases where appropriate for family-plan insurance coverage.

1. Provisions of coverage

Provisions of the health-care insurance program shall be detailed in master policies and contracts agreed upon by the Board and the Association and shall include:

- a. Hospital room and board and miscellaneous costs
- b. Out-patient benefits
- c. Laboratory fees, diagnostic expenses, and therapy treatments
- d. Maternity costs
- e. Surgical costs
- f. Major-medical coverage

2. Carrier(s)

The health insurance carrier(s) shall be for the basic hospitalization and medical-surgical coverage, and for the major-medical coverage.

3. Special program(s) and carrier(s)

In addition to the above stated program, provision shall be made to provide the following health programs:

- a. Prescription drug costs
- b. Dental care
- c. Optical care

delegated to committees and it should not be negotiated.

The board may want to arrange for the use of a committee to provide suggestions and advice on this topic.

The Liaison Committee article is actually ARTICLE XVIII; the Instructional Council article is found at ARTICLE XIX.

The board might properly negotiate the amount of insurance for employees and the kind provided. But it is generally wiser for boards to avoid negotiating the actual carrier(s) of this insurance. The board might desire to place the proposal out for bids and negotiating an actual carrier would restrict this.

More and more boards are negotiating on the cost of a benefit, rather than the benefit itself. For example, a board may agree to pay \$50 per employee toward a prescription drug insurance plan; employees pay the rest of the insurance premium. This approach has numerous benefits:

- it prevents the board's automatic assumption of increases in insurance costs;

The Board shall make full payment for the services listed above in this paragraph with a carrier(s) approved by the Association.

4. Complete annual coverage

For each teacher who remains in the employ of the Board for the full school year, the Board shall make payment of insurance premiums to provide insurance coverage for the full twelve (12) month period commencing September 1st and ending August 31st. When necessary, payment of premiums in behalf of the teacher shall be made retroactively or prospectively to assure uninterrupted participation and coverage.

B. Retirement Coverage

The Board shall provide for continuance of health-care insurance after retirement on the terms detailed in the master policies and contracts agreed upon by the Board and the Association.

C. Description to Teachers

The Board shall provide to each teacher a description of the health-care insurance coverage provided under this ARTICLE, no later than the beginning of the 19 - school year, which shall include a clear description of conditions and limits of coverage as listed above.

D. Washington National Meetings

The superintendent shall permit representatives of the NJEA Washington National Income Protection Plan to meet with teachers for the purpose of enrolling new members and permitting present members to adjust their coverages at faculty meetings on a district or building level at the request of the Association. Requests for such meetings shall be made no more than once a year. It is agreed that the Washington National representative shall be permitted a minimum of twenty (20) minutes for the meeting.

Article XXX, Personal and Academic Freedom

A. Personal

The personal life of a teacher is not an appropriate concern or attention of the Board except as it may directly prevent the teacher from performing properly his assigned functions during the workday.

B. Citizenship

Teachers shall be entitled to full rights of citizenship, and no religious or political activities of any teacher or the lack thereof shall be grounds for any discipline or discrimination with respect to the professional employment of such teacher, providing said activities do not violate any local, state or federal law.

C. Academic

The Board and the Association agree that academic freedom is essential to the fulfillment of the purposes of the School District, and they acknowledge the fundamental need to protect teachers from any censorship or restraint which might interfere with their obligation to pursue truth in the performance of their teaching functions. Accordingly, they agree as follows:

1. Controversial material

Teachers shall be guaranteed full freedom in classroom presentations and discussions and may introduce politically, religiously or otherwise controversial material, provided only that said material is relevant to the course content.

2. Personal opinion

In performing their teaching functions, teachers shall be guaranteed full freedom in expressing their personal opinions on all matters relevant to the course content, provided, however, that when they do so they shall make every effort to indicate that they are speaking personally and not on behalf of the school, its administration, or the Board.

3. Censorship

Teachers shall not be censored or restrained in the performance of their teaching functions on the ground that the material discussed and/or opinions expressed are distasteful or embarrassing to those in authority in the school system or detrimental to school or school system public relations.

- it makes employees aware that such benefits are substantial cost items;
- it may make the union interested in dropping a demand for a new insurance benefit;
- and, if the board agrees in subsequent negotiations to increase its share of the premium cost, it does so as a concession to the union, in exchange for which a concession should be obtained from the union.

If it is agreed that Washington National representatives may conduct meetings in the school, such meetings should not constitute one of the meetings provided elsewhere in the contract. There is no reason why it should constitute a "faculty meeting." Because Washington National is, in effect, a subsidiary of NEA, it is advisable to allow meetings only outside of the school day. Certainly, teachers should not be compensated for their voluntary attendance at this meeting.

While it should not be the board's intention to in any way deprive a teacher of any of the rights that an individual, or an individual in the capacity of a teacher, is provided as a matter of law, this type of clause in the contract would be an inappropriate matter for the purpose of collective negotiations.

It should be noted, however, that the provision of this demand contained in paragraph A, which states that the personal life of a teacher is not an appropriate concern of the board, is not a sufficiently clear statement. The board must have a definite and distinct interest in the personal life of a teacher as it might bear upon his or her suitability for teaching in the district.

Further litigation will determine whether academic freedom is a term and condition of employment or whether its protection is more nearly an issue of major educational policy. In any event, constitutional freedoms of public school employees can and have been protected outside the confines of the negotiated agreement.

Article XXXI, Books and Other Instructional Materials and Supplies

A. Purpose

The Board shall allocate sufficient funds to provide for the purchase and/or replacement of textbooks, library books, instructional materials, supplies and equipment of sufficient quality and quantity to enable teachers to properly fulfill their teaching responsibilities. Specifically, the Board agrees that during the 19 - school year it shall provide the following allocations:

1. Per pupil costs

Funds for instructional materials and supplies shall be increased by not less than (\$) dollar(s) per pupil for kindergarten through sixth grade and by not less than (\$) dollar(s) per pupil for seventh grade through twelfth grade. Teachers purchasing materials and/or supplies with the advance approval of their principal or immediate superior shall be reimbursed upon submission of an appropriate receipt of purchase.

2. Home instruction

(\$) dollars per home instructor shall be used to purchase additional materials and supplies necessary in carrying out the instructional program. Such teachers shall be reimbursed up to said amount upon submission of an appropriate receipt of purchase.

3. Petty cash

A Petty Cash Fund shall be established in each building for use in purchasing incidental supplies for classroom instructional use. Expenditures from this fund shall be at the discretion of the teacher. The teacher shall be reimbursed upon presentation of a paid receipt for such expenditures to the principal, up to the following maximums.

- a. Secondary schools - (\$) dollars per teacher per month
- b. Elementary schools - (\$) dollars per teacher per month

B. Review and Evaluation of Books and Materials

1. Procedure

An improved procedure for reviewing and evaluating books and other instructional materials and supplies shall be instituted as soon as possible after the effective date of this Agreement. Said procedure shall provide, among other things, for the following:

- a. A separate committee shall be established to make recommendations for each subject area;
- b. School-based teachers shall constitute a majority of each such committee;
- c. A subject supervisor shall not be able to override the recommendations of such committee;
- d. The recommendations of each such committee shall be published and distributed to all schools; and
- e. The distinction between books adopted for system-wide use and those for which there is freedom for individual school and/or teacher choice shall clearly be defined.

2. Textbook Policy Committee

A Textbook Policy Committee (consisting of () members appointed by the superintendent and () members appointed by the Association) shall be established as soon as practicable to work out the mechanics of the aforesaid procedure so that it may be implemented by the beginning of the 19 - school year.

3. Pay and/or released time

Teachers serving on committees organized pursuant to this ARTICLE shall be provided with scheduled released time for this purpose and/or paid at the rate specified in ARTICLE VII, Section A, paragraph 4 of this Agreement, for time spent in excess of the regularly scheduled in-school work year or workday.

C. Standards for Materials

1. Criteria

Instructional materials used in the School District shall reflect the multi-ethnic nature of our society and shall evidence a sensitivity to prejudice, to stereo-

In June, 1978, PERC ruled that teachers had no right to use students as messengers for union notices to parents. The decision would also apply to classroom discussion of the district labor disputes which are initiated by the teacher.

A. Procedures for reimbursement for purchase of equipment and supplies are negotiable. But the decision as to how much money to make available for reimbursement, and what materials are needed to enable teachers to fulfill their responsibilities is not negotiable.

B. It is not clear if PERC's ruling regarding Board-Teacher Liaison Committees will extend to such things as textbook selection committees. Certainly, B.1.c. is illegal; such committees cannot interfere whatsoever with management prerogatives.

C.1. The criteria for textbook selection listed here may be excellent but, because this clause does not relate to

types, and to materials offensive to minority groups, as measured by the following criteria:

- a. The suggestion, by omission or commission or by over- or under-emphasis, that any racial, religious, or ethnic segment of the population is more or less capable or more or less important than any other in the mainstream of American life is to be avoided.
- b. Opportunities for full, fair, accurate, and balanced treatment of minority groups should be utilized.
- c. Recognition of minority groups by frequent placement in positions of leadership and centrality is necessary.
- d. Both male and female members of minority groups should be depicted in situations which exhibit them as worthy examples of mature American citizens.
- e. Attention should be given to the presentation of fully integrated human groupings and settings indicating equal status.
- f. The group representation of individuals should be clearly apparent and the exclusive utilization of Caucasian facial features avoided in such representation where appropriate.
- g. Broad-ranging, well-planned, and comprehensive materials which represent the contribution and achievements of minority groups in art, science, history, literature, and all other aspects of life and culture should be apparent in the design of materials.
- h. Life in contemporary urban environments, as well as rural and suburban environments, should be pictured.

2. Materials Center

A materials center shall be maintained and charged with the responsibility of seeking multi-ethnic materials related to study units being taught. The center shall also develop and maintain a current list of resource centers and persons within and outside the community.

D. Testing

Achievement tests which are to be used by the School District for district-, school-, subject, or grade-wide purposes shall be approved in advance by the Instructional Council as heretofore established in ARTICLE XXIII of this Agreement. The Instructional Council shall consider the kind and type of test, the use to which a test is to be put, and the dissemination of the test results and any interpretation of those results.

Article XXXII, Deduction from Salary

A. Association Payroll Dues Deduction

1. The Board agrees to deduct from the salaries of its teachers dues for the Association, the County Education Association, the New Jersey Education Association or the National Education Association, as said teachers individually and voluntarily authorize the Board to deduct. Such deductions shall be made in compliance with Chapter 233 N. J. Public Laws of 1969 (NJSA 52:14-15.9e) and under rules established by the State Department of Education. Said monies together with current records of any corrections shall be transmitted to such person as may from time to time be designated by the Association by the 15th of each month following the monthly pay period in which deductions were made. The person designated shall disburse such monies to the appropriate association or associations.

2. Each of the associations named above shall certify to the Board, in writing, the current rate of its membership dues. Any association which shall change the rate of its membership dues shall give the Board written notice prior to the effective date of such change.

B. Local, State and National Services

The Board agrees to deduct from teachers' salaries money for local, state and/or national association services and programs as said teachers individually and voluntarily authorize the Board to deduct and to transmit the monies promptly to such association or associations. Any teacher may have such deductions discontinued at any time upon sixty (60) days' written notice to the Board and the appropriate association.

Article XXXIII, Miscellaneous Provisions

A. Nondiscrimination

The Board agrees that there shall be no discrimination, and that all practices, procedures, and policies of the school system shall clearly exemplify that there is no discrimination in the hiring, training, assignment, promotion, transfer, or discipline of teachers or in the application or administration of this Agreement on the basis of race, creed, color, religion, national origin, sex, domicile, marital status, age or sexual orientation.

a term and condition of employment, it is a prohibited subject for negotiations.

D. This is an illegal subject.

There are only two mandatory requirements in the law with respect to deduction of dues for employee organizations. First, any one employee can have his dues deducted for only one grouping of employee organizations, such as the local association, the NJEA, the NEA. Under no circumstances, can the teacher have dues deducted for two separate and distinct employee organizations, such as the AFT and NEA. The second mandatory feature of the law is the requirement that notice of withdrawal is effective on January 1 and July 1 next succeeding the date of which notice of withdrawal is filed.

A. This paragraph is, for the most part, a paraphrase of law. It is a much better practice to quote the law verbatim than to paraphrase it. It is also advisable to prohibit arbitration over such legal matters, and to direct grievances over such matters to the appropriate legal forum.

B. Board Policy

This Agreement constitutes Board policy for the term of said Agreement, and the Board shall carry out the commitments contained herein and give them full force and effect as Board policy.

C. Savings Clause

Except as this agreement shall otherwise provide, all terms and conditions of employment applicable on the effective date of this Agreement to employees covered by this Agreement as established by the administrative procedures and practices in force on said date, shall continue to be so applicable during the terms of this agreement. Unless otherwise provided in this Agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce, or otherwise detract from any teacher benefit existing prior to its effective date.

D. Separability

If any provision of this Agreement or any application of this Agreement to any employee or group of employees is held to be contrary to law, then such provision or application shall not be deemed valid and subsisting, except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect.

E. Compliance between Individual Contract and Master Agreement

Any individual contract or job description between the Board and an individual teacher, heretofore or hereafter executed, shall be subject to and consistent with the terms and conditions of this Agreement. If an individual contract or job description contains any language inconsistent with this Agreement, this Agreement shall be controlling.

F. Printing Agreement

Copies of this Agreement shall be printed at the expense of the Board after agreement with the Association on format within thirty (30) days after the Agreement is signed. The Agreement shall be presented to all teachers now employed, hereafter employed, or considered for employment by the Board.

G. Notice

Whenever any notice is required to be given by either of the parties to this Agreement to the other, pursuant to the provision(s) of this Agreement, either party shall do so by telegram or registered letter at the following addresses:

1. If by Association, to Board at (address)
2. If by Board, to Association at (address)

Article XXXIV, Duration of Agreement

A. Duration Period

This Agreement shall be effective as of [Date of implementation] and shall continue in effect until [Date of expiration]

[NOTE - In Agreements which extend for more than one (1) year and negotiations over fiscal matters are to be conducted annually, insert the phrase:
subject to the Association's right to negotiate each annual budget with negotiations commencing no later than October 1 of each year, under procedures defined in ARTICLE II, and . . .]

Paragraph B. is a superfluous paragraph that simply states that the board must carry out the commitments contained in the contract and gives them the effect of board policy. It is, of course, the intention of the board, as well as the association, to adhere to the provisions of the contract. This paragraph should be deleted.

C. This paragraph is not a "savings clause" (see ARTICLE IV. B., Statutory Savings Clause.) Rather it is a clause which retains all possible benefits from any source. It is commonly called a "past practice" clause. This type of provision can be extremely detrimental to a board and should be avoided. If included in the agreement, the result would be to include by reference in the contract all pre-existing "rights" provided or presumed in statutes, policies, administrative decisions or even practices of individual administrators.

D. This is a standard clause.

E. The content of a job description is not negotiable. Because job descriptions deal primarily with the responsibilities of the assignment, they do not set "terms and conditions of employment" within the meaning of Ridgefield Park.

If the contract is going to exist for a particular period of time, but certain specific items, i.e., salaries, are to be negotiated during the course of the duration of the remainder of the contract, it should be specifically so stated in a reopener clause. There should be no vagueness whatsoever

subject to the Association's right to negotiate over a successor Agreement as provided in ARTICLE II. This Agreement shall not be extended orally, and it is expressly understood that it shall expire on the date indicated, unless it is extended in writing.

B. Status of Incorporation

Option 1

[For Incorporated Local Association]

In witness whereof the parties hereto have caused this Agreement to be signed by their respective presidents, attested by their respective secretaries, and their corporate seals to be placed hereon, all on the day and year first above written.

ASSOCIATION

BOARD OF EDUCATION

By
Its President

By
Its President

By
Its Secretary

By
Its Secretary

Option 2

[For Unincorporated Local Association]

In witness whereof the parties hereto have caused this Agreement to be signed by president and secretary and the Board has caused this Agreement to be signed by its president, attested by its secretary and its corporate seal to be placed hereon, all on the day and year first above written.

ASSOCIATION

BOARD OF EDUCATION

By
Its President

By
Its President

By
Its Secretary

By
Its Secretary

with respect to these matters. The Sample Agreement language on a re-opener clause refers to "each annual budget," which is totally inappropriate. If it stated "over salary" or "over economic benefits" it would be more acceptable. October 1 is too early for salary negotiations to occur in most districts.